United States Court of Appeals

for the Second Circuit

JOINT APPENDIX

76-4077

In The

United States Court of Appeals

For The Second Circuit

STOLL INDUSTRIES, INC. and MELANGE SPORTSWEAR, INC.,

Petitioners,

-against-

NATIONAL LABOR RELATIONS BOARD,

Respondent.

JOINT APPENDIX

Volume II, pp. JA235-End

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JUDGE PLAINE: All through?

MR. PULVERMACHER: Yes.

JUDGE PLAINE: All of these things that you are telling me now are matters of defense.

This witness is not going to admit these things to you because he has testified quite to the contrary.

Now, if you have proof of these other matters, you'll have to bring witnesses for that proof, counsel. I assume you have witnesses who will testify to that.

MR. PULVERMACHER: I think you're safe in such an assumption, your Honor.

JUDGE PLAINE: All right.

Then let's not waste time in trying to get the witness to admit all of these faults which he denies.

BY MR. PULVERMACHER:

Q I wasn't clear, with regard to Louis Martinez, he was fired before Christmas or after Christmas?

A I believe it was before.

Q Did you understand that Thursday, December 26th, and Friday, December 27th, were days off or were they work days?

A I don't recall.

MR. BLYER: May I -- all right.

A. Do you know what holidays customarily you have off at Christmas-New Year's?

MR. BLYER: Your Honor, may I object.

What does it matter what the customary holidays are?

MR. PULVERMACHER: Well, you went into eight work days and I'm trying to establish the additional two days after the holidays were not customary, so I think I'm entitled to it.

JUDGE PLAINE: Well, customary wouldn't mean a thing to this man. He started work for you in September.

MR. PULVERMACHER: Sir?

JUDGE PLAINE: He wasn't there the previous Christmas, so how would that be customary.

MR. PULVERMACHER: I'm talking about his experience.

JUDGE PLAINE: You're talking about customary for this plant. This man started work in September for you. He can't possibly testify to you what was customary.

BY MR. PULVERMACHER:

Q Do you know if the plant worked Thursday, December 26th and Friday, December 27th?

A No, I don't recall.

MR. PULVERMACHER: That's all.

JUDGE PLAINE: Any further questions?

MR. BLYER: I think one.

REDIRECT-EXAMINATION (CONTINUED)

BY MR. BLYER:

Q When you came back to work in early January, Mr. Arroyo, did anyone tell you that you were given a raise because you did poor work over the last three weeks or despite the fact that you did poor work?

MR. PULVERMACHER: Objection.

MR. BLYER: I withdraw the question, your Honor.

JUDGE PLAINE: All right.

MR. BLYER: I have nothing further,

JUDGE PLAINE: Anything further of this witness?

MR. PULVERMACHER: No, your Honor.

MR. BLYER: I have nothing further, your Honor.

JUDGE PLAINE: The witness is excused. You're excused.

(Witness excused.)

JUDGE PLAINE: Off the record, please.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

Mr. Blyer, call your next witness, please.

MR. BLYER: Mr. Vargas.

Whereupon, NICHOLAS VARGAS, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. BLYER:

Q Would you please state your full name and home address for the record?

A Nicholas Vargas.

Q Mr. Vargas, did you work for Stoll Industries?

A Yes, sir.

Q Are you still working there?

A No.

Q Do you recall approximately when you began working for Stoll Industries?

A No, I don't.

Q Now, Mr. Vargas, do you recall speaking to the foreman, Norris, in early January 1975?

A No, I don't.

Q Do you recall speaking -- strike that.

Do you recall Norris giving you anything in

early January of 1975?

THE INTERPRETER: Norris giving you something?

MR. BLYER: Yes.

A. I don't recall whether it was at the beginning of January or February, but I do recall that he gave me a union card.

Q. Now, did he tell you what the card was?

A. He told me that it was a card for Local 318 to which we belonged to and that I had to sign it.

Q. And at that time, was anyone with you?

A. Yes.

Q. Who?

A. Nelson.

Q. And did you or Nelson say anything to Norris?

A. Yes.

Q. What did you say?

A. That we couldn't sign that card because we didn't like that union.

Q. And what happened then?

A. Shortly after Mr. Pete arrived. He asked who were those who had not signed the cards.

Q. Excuse me.

Who was he talking to?

A. He spoke to Nelson and to me.

Q And did anyone say anything to him?

A Yes.

Q What was said?

A We told him that we didn't sign for the union, we didn't like that union.

Q And what did Mr. Rossi say?

A He took us to the office.

Q And what happened there?

A He was talking to us while the other boss arrived -- I don't remember the name.

THE INTERPRETER: And the witness is pointing to somebody here.

MR. BLYER: Let the record reflect that the other boss who arrived that Mr. Vargas related is Mr. Yagoda.

BY MR. BLYER:

Q Now, what did Mr. Rossi say to you and to Nelson at the time in the office?

A He asked, why didn't we want to sign the card? That it was a good union and that union already has a contract with the company.

Q And what did you say?

A That we couldn't sign the card, that we didn't like that union.

He said that the only way we could keep the jobs

is by signing the cards.

I said that that was a threat to us and that, therefore, we had to sign the card.

Q And what happened?

A And so we had to sign the card.

MR. BLYER: Thank you very much, Mr. Vargas.

I have nothing further, your Honor, of this witness.

CROSS-EXAMINATION

BY MR. PULVERMACHER:

Q Do you speak Italian?

A No.

Q Do you speak English?

A Not much.

Q Was Mr. Rossi speaking in English?

A Yes.

Q You don't speak English?

MR. BLYER: Your Honor, he answered that question.

JUDGE PLAINE: He said not much.

MR. BLYER: He answered the question.

JUDGE PLAINE: That means he speaks a little.

BY MR. PULVERMACHER:

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Q Did you understand what Mr. Rossi was saying by yourself?

A Yes.

JUDGE PLAINE: The answer was yes?

THE INTERPRETER: That's correct, your Honor, his answer was, "yes."

BY MR. PULVERMACHER:

Q Without going through the Interpreter and I ask the Interpreter to say this to the witness, without going through the Interpreter, would you tell us, using English phrases, one thought that Mr. Rossi expressed --

A What?

You speaking to me?

Q Yes.

A What you say?

Q No, no.

I want the Interpreter to interpret for him what I have just said, that I would like his response in English.

A He say why you no like the union 318. I say me and Nelson no like for the union. He say, you supposed to sign for the card forthe 318. If you no sign for the card for Local 318, you no work.

MR. PULVERMACHER: I was trying something.

I prefer you work with the Interpreter.

I think the Court understand what I mean.

JUDGE PLAINE: I think the witness has indicated that he understood in English and he understood what he was being told.

THE INTERPRETER: Okay.

JUDGE PLAINE: And he gave it in English himself without the use of the Interpreter.

Proceed.

BY MR. PULVERMACHER:

Q Now, were you at the shop meeting that Mr. Olivieri conducted in December of 1974?

A I don't see Mr. Olivieri.

THE INTERPRETER: Who is he?

BY MR. PULVERMACHER:

Q He was here just before. I believe he was in a tan jacket sitting at the end of the table.

A I'd rather see him coming back and point him out because I could confuse him with some other person.

Q Well, were you at a meeting in December at which someone spoke?

MR. BLYER: Your Honor, that's quite vague.

A No.

JUDGE PLAINE: It's a little bit.

BY MR. PULVERMACHER:

Q Were you at a meeting of all of the employees of the shop in December in which someone got up and spoke about union activities?

A I don't remember, but I do remember there was a meeting where somebody got up and talked.

Q Was that a man from 155?

A No.

Q Was it a man from 318?

A Yes.

He introduced himself as a man from Local 318.

Q Did you work after Christmas?

A Yes.

Q Did you work the Thursday and Friday after Christmas?

A I don't recall.

Q Did you work the week after New Year's?

A After the holidays, I don't remember whether I was out because the work was slow for a week or not.

Q Did you -- strike that.

Were you out of work any substantial period of time around New Year's?

THE INTERPRETER: Around New Year's, you say?

MR. PULVERMACHER: Yes, about the first of

the year. JA245

THE INTERPRETER: Okay.

A Before Christmas?

Q After Christmas.

MR. BLYER: Your Honor, may I lodge an objection.

Why don't we have the records?

I mean, do we prove anything by questioning this man if he can remember when he was out.

MR. PULVERMACHER: Well -- yes.

You used him to substantiate Arroyo's testimony, and I'm using him to attack his credibility.

MR. BLYER: Do you really think you are attacking this man's credibility?

MR. PULVERMACHER: No.

Let me make that perfectly clear.

MR. BLYER: All right.

JUDGE PLAINE: I think there is a point again, which I emphasized before, if we're starting to get people to remember working days and days they didn't work, the records are here, I assume. You got the man's records.

It isn't going to be very helpful for him to be guessing as to whether he worked so many days after Christmas or before Christmas.

MR. PULVERMACHER: Well, the records show that he worked --

JUDGE PLAINE: Well, I don't have the records.

MR. PULVERMACHER: Well, may I interrupt to put somebody on --

MR. BLYER: I'll stipulate them if you show me.

MR. PULVERMACHER: He worked the week of January the 11th. He worked the week of Christmas week.

MR. BLYER: Why don't you show me the records?

MR. PULVERMACHER: That's what I wanted to do, interrupt this man and put my man on.

JUDGE PLAINE: Wait a minute, counsel. General Counsel has been working with you in this area, he has not required you to prove the authenticity of these cards. He's accepted them in the Arroyo case.

Now, I assume he's making the same offer to accept your cards in this man's case, without the necessity for proof.

Normally he would be right to object, but he doesn't object.

MR. PULVERMACHER: Well, I don't have the timecards here, I just have summary statements.

JUDGE PLAINE: Then I would rather not waste time on a guessing contest as to which days of which week he worked.

I think it's pure guesswork.

MR. PULVERMACHER: Well, I --

JUDGE PLAINE: And I don't propose to spend time with it.

MR. PULVERMACHER: All right, your Honor.

BY MR. PULVERMACHER:

Q Mr. Vargas, you said you worked for Stoll Industries.

You didn't mean that, did you, sir?

A How?

Q Did you work for Stoll Industries or Melange?

A I think it was for Melange, I don't recall where. I didn't pay attention to the check.

MR. PULVERMACHER: Let the record show that this man did work for Melange.

General Counsel will stipulate to that, I think.

MR. DLYER: I'll stipulate to that.

MR. PULVERMACHER: I just wanted to clarify

that one point of his testimony which was in error.

JUDGE PLAINE: Do we have a stipulation that he worked for Melange?

MR. BLYER: Yes, your Honor.

JUDGE PLAINE: The stipulation is accepted.

Thank you.

Next question.

BY MR. PULVERMACHER:

Q You saw Mr. Arroyo the night before he was fired in January, did you not?

A I don't recall.

Q Did anybody tell you, Mr. Vargas, before Mr. Arroyo was fired, that there was some trouble with Mr. Arroyo's work?

A Yes.

Q What did they tell you?

A That he had made a wrong, a bad -- a wrong error.

Q Who told you that?

A Norris.

Q And isn't it a fact that Norris or Carmine had made similar statements from time to time before that about Arroyo's work?

Q Carmine and Norris got us all together in the shop and he said that one person already had made an

error and in the future anybody who makes an error will be fired.

Q That statement, as I recall, was made before Christmas; is that correct?

A Yes.

Q And then later in January, the day before Arroyo was fired, you heard that Arroyo had made another mistake; is that correct?

A No.

The day before nobody knew anything. It was after that day that it came to be known that he had made an error.

Q Well, I believe Mr. Arroyo's testimony was that you and Arroyo had a conversation the night before he was fired.

THE INTERPRETER: The night before?

MR. PULVERMACHER: Yes.

A The night before?

Q Yes.

A With whom did you say the conversation was?

Q Arroyo.

A Arroyo and who else?

Q Arroyo and Vargas.

A Yes.

And I told him that they were thinking of firing

him because he had made a bad order, a wrong order.

THE INTERPRETER: I'm sorry, my voice is fading.

Your Honor, I wish I could stop for awhile.

JUDGE PLAINE: Well --

THE INTERPRETER: As soon as you finish with him, your Honor.

JUDGE PLAINE: All right.

BY MR. PULVERMACHER:

Q The word "they," meaning the employer?

A Norris.

MR. PULVERMACHER: Thank you.

THE INTERPRETER: Okay?

JUDGE PLAINE: That concludes the cross examination?

MR. PULVERMACHER: Yes.

JUDGE PLAINE: Do you have some redirect?

MR. BLYER: Possibly, your Honor.

It will be very brief, your Honor, if at all.

JUDGE PLAINE: That's all right.

MR. BLYER: I have nothing, your Honor.

JUDGE PLAINE: Thank you.

You're excused.

(Witness excused.)

JUDGE PLAINE: Do you have any more -- off the record, please.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

MR. BLYER: I recall Mr. Lewis.

(Norman Lewis recalled.)

JUDGE PLAINE: Now, for the record, this is recall on one unresolved issue that we gave counsel for the Respondent permission to cross-examine on.

Very good, Mr. Pulvermacher.

RECROSS-EXAMINATION

BY MR. PULVERMACHER:

Q Mr. Lewis, did you bring the NCO Report concerning Stoll?

A Yes, I did.

JUDGE PLAINE: That meant in full words?

MR. PULVERMACHER: It meant National Credit Office. It's the common parlance used in this area for the type of report.

JUDGE PLAINE: The National Credit Office Reports, is that what you're talking about?

MR. PULVERMACHER: Yes, your Honor.

In the garment industry, it's a credit reporting agency to which many people have access.

MR. PULVERMACHER: Yes, sir.

JUDGE PLAINE: Does that satisfy your need, Mr. General Counsel?

MR. BLYER: I think so.

JUDGE PLAINE: All right.

MR. BLYER: As I understand it, [illegible] is no longer an issue in the case.

JUDGE PLAINE: All right.

Very good.

That being the situation, I take it there will be no need for the enforcement of the [illegible].

Is that correct?

MR. BLYER: Absolutely, your Honor.

JUDGE PLAINE: All right.

Now, who is the next witness that we're going to deal with?

MR. PULVERMACHER: Not me, I can't answer that, your Honor.

MR. BLYER: Rossanna Narvaez.

JUDGE PLAINE: You were sworn in previously.

THE WITNESS: Yes.

CROSS-EXAMINATION

BY MR. PULVERMACHER:

Q Miss Narvaez, you said at direct examination [illegible]

you had a conversation with Mr. Rossi --

A Yes, I did.

Q Pardon?

A Yes, I did.

Q When did that conversation take place?

A Monday morning.

Q Monday morning?

A Yes.

Q What time of the day was it that this conversation took place?

A It was about 9:30, to be exact.

Q And are we agreed that the working hours start at 8:30?

A They start at 8:30, yes.

Q And that you were late?

A I was.

Q And that Mr. Rossi had said something to the effect that if you worked for me, you'd be fired?

A Excuse me?

Q That if you had been working for him, he would fire you?

MR. BLYER: Objection, your Honor.

A No, that wasn't --

MR. BLYER: Hold it.

JUDGE PLAINE: What's your objection?

MR. BLYER: I object to the form of the question when he asks, in effect.

I think the witness should be asked to repeat what the conversation was rather than for her to characterize the conversation.

JUDGE PLAINE: It might be helpful, so we don't get into semantics as to just what might have been said and, therefore, its effect.

MR. PULVERMACHER: All right.

BY MR. PULVERMACHER:

Q What did Mr. Rossi say to you on Monday, June 16th?

A He tells me, "Fine time."

I says, "Yes, fine time."

Q You understood that to mean -- let me interrupt you and we'll get back to the rest of the conversation.

Fine time, it's 9:30, not 8:30, is that what you understood him to mean by it?

A For instance, I'm late.

Q Yes.

A Yes.

Q What next did he say to you?

A He tells me, you know, I'm lucky to have this -- I was lucky to have that job. "You're lucky to have this job."

Q Did you understand that to be said in relation to your then being late?

A Well, it must have been.

Q Okay.

What did he next say to you?

A He tells me -- we got into the elevator and he tells me, "There hasn't been one time that you've been early."

And I laughed. I told him, "Well, you want to check my timecards?"

And he tells me, "You haven't been early, not one time."

I says, "Check my timecards."

He goes, "Don't get so smart." He says, "Don't get so smart."

I said, "I'm not getting smart, I'm just telling you like it is."

He goes, "Don't tell me nothing. Don't get so smart." So he said, "Wait 'til we get upstairs."

Okay, we stepped out of the elevator and we got off at the sixth floor. And when I was going to punch my timecard, he tell me, "Don't punch." He told me, "Don't punch."

I says, "You're telling me not to punch"?

He says, "Don't punch."

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Then he went inside. He got Carmelo.

Oh, but before he did -- that probably has nothing to do -- anyway --

Q. Go on. He got Carmelo?

A. Yes.

Carmelo came to me -- but first of all, he told me, he says, "You want to come in late, then you come in at 12:30. That's when you punch in."

I didn't come back because I have no money to be spending like that. I just went home and stood there.

Q. You went home?

A. Yes, I went home.

Q. I see.

You reported back in on 12:30?

A. No, I didn't.

Q. You didn't come back?

A. I have no money to be wasting like that. I'm not Rockefeller.

So --

MR. PULVERMACHER: Well, I move to strike that, "I'm not Rockefeller."

THE WITNESS: Okay.

A. Well, I aint rich, let's put it that way.

MR. PULVERMACHER: I also move to strike that.

BY MR. PULVERMACHER:

Q. You didn't tell that to Mr. Rossi, did you?

A. No, no.

I'm telling you.

Q. We understand that.

We're interested really in what he said and what you said and not what you thought.

Okay?

A. Okay.

So --

JUDGE PLAINE: Was it Mr. Rossi who told you to come back at 12:30?

THE WITNESS: Yes, he tells me to come back at 12:30.

BY MR. PULVERMACHER:

Q. Now, you were saying that he went inside to get Carmelo?

A. Yes.

Carmelo came out.

He tells me, "Rossanna, why are you late?"

And I told Pete why I was late.

Q. You didn't tell Carmelo, you told Pete?

A. I told Pete and then I told Carmelo.

He tells me, "Why?"

I says, "Because the bus took long."

He says, "Why didn't you call?"

I says, there was no telephones around me and I was waiting for the bus."

So he tells me I can't do nothing, Carmelo told me, "I can't do nothing."

He said to come in at 12:30."

Q. And you didn't come in at 12:30?

A. No, I didn't.

My house is a distance away.

Q. Now, do you consider yourself an efficient employee?

A. Excuse me?

Q. Do you consider yourself an efficient employee?

A. In other words?

Q. A good employee who does her job properly.

A. Sure I do my job properly.

Q. Do you consider yourself -- do you consider yourself to have a lot of absenteeism?

MR. BLYER: Objection.

Irrelevant, your Honor.

JUDGE PLAINE: I don't understand the relevance.

MR. PULVERMACHER: You raised the subject 9:30 by introducing it. I want to pursue that. I have all of her cards here.

which have been requested by your office, I don't think it's appropriate to distribute them on the table.

JUDGE PLAINE: Gentlemen, can we have enough of this?

This has nothing to do with the case.

I'm not interested in the side play. Let's forget it.

I'm ruling that I'm not going to allow you to go into the record of lateness or non lateness of this witness, counsel. It's immaterial to this case, whether she was late everyday or whether she was never late. It makes no difference to this case.

So let's get on to another subject, counsel.

BY MR. PULVERMACHER:

Q It was Carmelo that came over and took the final action with respect to your not checking in Monday; isn't that correct?

A Excuse me?

Q Carmelo.

A Carmelo what? Repeat yourself, please.

Q You came up in the elevator.

A Yes.

Q You spoke to Mr. Rossi.

A Yes.

Q Mr. Rossi went and spoke to whom?

Whom did he speak to?

A After he got through with me, he spoke with Carmelo.

Q Carmelo?

A Yes.

Q Who is Carmelo?

A The foreman.

Q The foreman?

A Yes.

Q Then Carmelo came over and spoke to you; is that correct?

A Yes.

Q Carmelo is a Stoll employee as you are?

A I don't know what he is. I know he's the foreman. He gives the work out.

Q He gives the work out?

A Yes.

Q And Carmelo was the one who told you not to check in, the final one, you took your instructions from Carmelo; right?

A Pete told me first.

Q Would you kindly answer my question?

JUDGE PLAINE: The witness is trying to

make sure that there is no misapprehension about her testimony.

A. Carmelo was the final one who told me.

Q. Carmelo was the final one?

A. That Pete Rossi had said that I had to sign in at 12:30, I couldn't punch in now.

Q. Do you know who Stanley Yagoda is?

A. No, I don't.

Q. Do you know who Stanley Yagoda is today?

A. Well, as far as I know, Stanley is the one sitting right before me. But I don't know him.

Q. You've seen him in the shop?

A. Yes, I've seen him once in awhile.

Q. Once in awhile?

A. Yes.

Q. You've been working in the shop since about October 13th or 14th?

A. About, I said, around the end of September, maybe the beginning of October.

Q. About nine months?

A. Yes.

Q. You also get paid by check?

A. Yes, I do.

Q. And you never look at the bottom of the paych

A. No.

Mr. Blyer.

MR. BLYER: I propose the following stipulation:

With regard to the employees employed by Melange Sportswear, the Packing and Shipping Department employees, that the company's records show that for the week ending January 4th, 1975, Mr. Arroyo did not work at all and Mr. Vargas did not work at all; and that with regard to the week ending January 11th, 1975, Mr. Arroyo didn't work at all and Mr. Vargas worked 26 hours out of the normal 35-hour week.

Agreed?

MR. PULVERMACHER: Agreed.

JUDGE PLAINE: Very good.

The stipulation is accepted.

It's been agreed that General Counsel will be given the privilege of examining -- how do you describe that book?

MR. PULVERMACHER: The Melange payroll records.

MR. YAGODA: Stoll's payroll records.

MR. PULVERMACHER: Oh, he can have both.

JUDGE PLAINE: -- payroll records after the trial time is over for today and that if there are

matters arriving that he wishes to make part of the record, either by exhibits or by live testimony, will have the right, but limited to these matters in connection with these books of account, even though the Respondents have started to present their case.

MR. BLYER: I'll call Mr. Rossi to the stand, please.

Whereupon, PETER ROSSI, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. BLYER:

Q Would you please state your full name?

A Peter Rossi.

Q Mr. Rossi, you're the Secretary-Treasurer of Melange Sportswear?

A Yes.

JUDGE PLAINE: What's your home address, Mr. Rossi?

THE WITNESS: Business address?

JUDGE PLAINE: Your personal address.

THE WITNESS: 1777 80th Street, Brooklyn, New York.

JUDGE PLAINE: Thank you very much.

BY MR. BLYER:

Q You are the Secretary-Treasurer of Melange Sportswear, Inc.?

A Yes, sir.

Q Does that company have a pension plan?

A No, sir.

Q A profit-sharing plan?

A No, sir.

JUDGE PLAINE: Did you say no?

THE WITNESS: That's correct, your Honor, no, sir.

MR. PULVERMACHER: Keep your voice up.

BY MR. BLYER:

Q Any type of medical coverage for employees?

A What's that?

Q Any type of medical coverage for employees?

A Yes, Blue Cross-Blue Shield.

Q Who participates in that program?

A In that program?

Q Yes.

A The principal and some office people.

Q Now, which principals participate in that office program?

A The president and --

Q Yourself?

A. -- and myself and some of the other people in the office.

Q. How about Mr. Orie?

A. What?

Q. Mr. Orie, does he participate in that plan, Mr. Norris Orie?

A. I don't know. You got to check out the records. I don't know.

MR. BLYER: Can you find that out, please?

MR. PULVERMACHER: We can't while the witness is on the stand.

MR. BLYER: What are you going to do if he's off the stand, he doesn't know.

MR. PULVERMACHER: He'll have to call somebody at the office who would know.

BY MR. BLYER:

Q. Mr. Carmine Minichino?

A. It may be. You can look at the records to show who is and who is not.

JUDGE PLAINE: What records would tell us?

MR. PULVERMACHER: Your Honor, may I ask a two-minute adjournment?

I think there is somebody here who would know.

I can take Mr. Orie outside and ask him.

JUDGE PLAINE: Does he know about the other people, too?

MR. PULVERMACHER: The company pays for Blue Cross and Blue Shield.

JUDGE PLAINE: That's for Mr. Orie?

MR. PULVERMACHER: Yes.

MR. BLYER: How about Mr. Minichino?

MR. MINICHINO: What was the question?

MR. PULVERMACHER: Who pays for your Blue Cross and Blue Shield?

MR. MINICHINO: Melange Sportswear.

MR. BLYER: Okay, I'll accept that as a stipulation, sure.

JUDGE PLAINE: Read the stipulation into the record, please.

MR. BLYER: Yes.

That in addition to Mr. Rossi and Mr. Susser, the President of Melange Sportswear, Mr. Orie and Mr. Minichino are covered by the company's Blue Cross and Blue Shield policy.

MR. PULVERMACHER: I'm not sure that that's a correct stipulation. I think it's covered by the existing union Blue Cross-Blue Shield program. I know they have Blue Cross and Blue Shield and I know

the company pays for it, but I'm not willing to stipulate that it's paid for by the company in contradiction to any other employee, which is I believe the point of your stipulation.

MR. BLYER: Well, then we have no stipulation then.

Okay, I'll move on.

JUDGE PLAINE: We have no stipulation?

MR. BLYER: No, I don't think we do.

BY MR. BLYER:

Q Do you have a separate Blue Cross and Blue Shield plan for people like yourself as opposed to your employees who work in the Packing and Shipping Department?

A They belong to the union. I don't belong to the union.

Q I don't think that answers my question.

A I'm answering your question.

Q What was the answer, sir?

A I told you.

Q Would you repeat it?

A I don't belong to the union, they belong to the union. Maybe they're covered by the union. I don't know.

Q Oh, you don't know if they're covered by the union?

A. I don't know.

JUDGE PLAINE: The question was:

Do you have Blue Cross and Blue Shield?

THE WITNESS: Me, personally, I have Blue Cross and Blue Shield.

JUDGE PLAINE: Is that a company policy?

THE WITNESS: Mine is a company policy.

BY MR. BLYER:

Q. And is Mr. Orie and Mr. Minichino covered under that policy, as well?

A. I think so, if they say so.

MR. PULVERMACHER: No, no.

Do you independently know?

THE WITNESS: No, I din't independently know.

MR. BLYER: So we have no stipulation, as far as I know.

JUDGE PLAINE: But we do have testimony that he's covered and that Mr. Susser is covered.

Is that right?

MR. PULVERMACHER: Yes.

JUDGE PLAINE: Who is Mr. Susser?

MR. PULVERMACHER: Mr. Susser is the President of the Melange Sportswear, your Honor.

MR. BLYER: All right.

BY MR. BLYER:

Q Did you --

JUDGE PLAINE: Excuse me.

MR. BLYER: Yes.

JUDGE PLAINE: Now, this is a company-paid policy?

THE WITNESS: Yes.

MR. BLYER: Yes.

BY MR. BYLER:

Q And you're a salaried person; isn't that correct? Do you receive a set salary each week?

A Yes.

Q Does that apply also to Mr. Minichino?

A Yes.

Q And to Mr. Orie?

A Yes.

Q Now, in the course of your work today, Mr. Rossi, is it not correct that from time to tome you will issue instructions and directions to the employees of Stoll directly to correct errors in manufacturing?

A No, sir.

To the foreman only.

JUDGE PLAINE: The answer is you issue directions to the foreman?

THE WITNESS: To the person that I got

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instructions to talk to.

JUDGE PLAINE: The Stoll foreman, is that what you mean?

THE WITNESS: Yes.

BY MR. BLYER:

Q You never talked to the employees directly?

A Maybe I did.

Q Well, is it yes or no?

A Yes, sometimes.

Q And you tell them that perhaps they're doing something wrong and they should fix it?

A Right.

Q And isn't it true you also tell them from time to time that you want one style produced ahead of another style?

A Yes, sir.

Q Now, did you have anything to do with the fact that Mr. Arroyo did not work the last -- the two days -- the three days -- the Wednesday, Thursday and Friday, that is -- during the Christmas week, the following week and the following week after?

MR. PULVERMACHER: Objection.

You said three days and then you went into three weeks.

I started to object to the three days

since one of the three days is Christmas and I don't think he means to indicate that this man created Christmas mass.

Did you?

MR. BLYER: Yes.

JUDGE PLAINE: I thought we were talking about something -- all right, let's make sure we know what we're talking about.

MR. BLYER: Yes, your Honor.

BY MR. BLYER:

Q Let me show you what's been introduced into evidence as Respondent's Exhibit --

A You don'g have to show me nothing. I don't have nothing to do with working or not working. That's all.

JUDGE PLAINE: Don't volunteer answers until there's a question, Mr. Rossi.

THE WITNESS: All right.

JUDGE PLAINE: Wait until there's a question.

THE WITNESS: I didn't even know he was work for us.

MR. PULVERMACHER: Just answer the questions.

THE WITNESS: I don't have nothing to do with it.

JUDGE PLAINE: I don't want any volunteered answers. Wait until there's a question pending, and then you can answer the question.

THE WITNESS: Okay.

JUDGE PLAINE: R4 is the 17 timecards.

MR. BLYER: Thank you, your Honor.

BY MR. BLYER:

Q With regard to Respondent's Exhibit #4, which was introduced into evidence, did you have anything to do with the fact that Mr. Arroyo didn't work the last two days of the week ending 12-28 and the weeks of -- and the days in the weeks ending 1-4 and 1-11-75?

A No, sir.

Q Who would have made such a decision?

A The head of the Shipping Department.

Q And his name is?

A Norris -- I don't know his second name.

Q Norris Orie?

A Yes.

Q But you had nothing to do with it?

A I had nothing to do with it.

Q Okay.

Did you have anything to do with Mr. Arroyo's discharge in January, at the end, 1975?

A I didn't even no he was discharged.

Q Oh, you didn't know he was fired?

A No, sir.

Q And who -- and do you know who was in -- who took care of that?

A I found out over here that Norris and Carmine Minichino took care of that.

Q And you didn't know that happened?

A Yes, sir.

Q And you're there everyday, is that correct, on the premises?

A Not everyday.

Q Almost everyday?

A Almost everyday.

Q Most of your business is with Stoll; isn't that correct?

A Percentage.

Q Over 50%?

A Yes.

Q Yes?

A Yes.

Q Closer to 75%?

A No.

Q Closer to about 70%?

A No.

Q No?

A. No.

Q. What then?

A. A little over 50.

Q. A little over 50%?

A. Yes.

Q. I see.

And you have a shipping area, do you not?

A. Yes.

Q. In the same location that Stoll operates its business?

A. Right.

Q. On what floor would that shipping area be?

A. Sixth floor.

Q. Do you have any facilities on the second floor?

A. No, sir.

Q. Do you rent space from Stoll?

A. Yes, sir.

Q. Do you have a lease?

A. What?

Q. Do you have a lease?

A. I don't know. I got to look at it. Maybe there is and maybe -- I don't know.

Q. Well, do you pay Stoll for the space?

A. Yes, sir.

Q. And you had no idea that Mr. Arroyo was fired

toward the end of January?

A No, sir.

Q I see.

Now, Mr. Rossi, do Mr. Orie and Mr. -- does Mr. Orie work right under you?

A Under me and Minichino.

Q And Mr. Minichino works under you, too?

A Yes, sir.

Q And when you're not there, they're in charge?

A All the time in charge.

Q Even when you're there?

A Right.

MR. BLYER: I have nothing further of this witness, your Honor.

JUDGE PLAINE: Any cross at this time or do you want to take him separately?

MR. PULVERMACHER: Well, I rarely get the privilege of cross-examining my own witness. It's a privilege I will not give away.

JUDGE PLAINE: You can take it either way.

MR. PULVERMACHER: No.

I'll go ahead.

CROSS-EXAMINATION

BY MR. PULVERMACHER:

Q Mr. Rossi, as I understand your testimony, you

didn't know Arroyo was fired on either time that's been discussed.

A No, sir.

Q You had nothing to do with his being fired.

A No, sir.

MR. BLYER: Your Honor, although I'm not objecting, I think counsel should be warned that, as I understand it, he is not still permittedto lead his witness.

MR. PULVERMACHER: I sure am. This is a cross. It's your witness.

MR. BLYER: Under Rule 43B, it's quite clear that this witness would be considered hostile. Although I made him my witness under Rule 43B, nonetheless, as I understand it, counsel would not be permitted to lead and so on and so forth.

JUDGE PLAINE: Well, strictly speaking --

MR. PULVERMACHER: Under cross examination, I am --

JUDGE PLAINE: Well, counsel, strictly speaking, this is a rather awkward thing that 43B. raises.

The witness is basically the witness for the other side.

General Counsel enjoys the privilege, as

does any opposing counsel, of calling witnesses for the other side who are principal officers, to testify on direct and to use cross examination methods in eliciting testimony.

I think it's the better practice, Mr. Pulvermacher, to avoid leading questions in examining such a witness in your turn, when your turn comes, since he is part of your case, for the very simple reason that if testimony is elicited by you under circumstances that indicate you're leading, the value of the testimony is greatly reduced. So, as a matter of good tactics, it's wiser to treat him as though you were on direct and then possibly only where you're having difficulty in eliciting testimony to which you think you're entitled, resorting to the traditional cross methods.

So with that general explanation, I suggest you proceed, trying to develope your case without leading him and resorting to leading questions only in cases of necessity.

MR. PULVERMACHER: Would the Reporter, not for the purposes of reasking the question but for my own purposes, refer back to where we were when objection was taken by counsel.

JUDGE PLAINE: Mr. Reporter, please.

(Record read.)

BY MR. PULVERMACHER:

Q. Referring to the Monday preceding Mr. Arroyo's discharge, Mr. Rossi, did you notice Mr. Arroyo in the street that day?

A. I seem him a lot of times in the street.

Q. You know Carmine?

A. Minichino?

Q. Yes.

A. Yes.

Q. Would you tell us how Carmine gets along with the employees under his --

A. I think pretty good.

Q. Well, is he of the nature to try to help them along?

A. Yes.

Q. Would you tell us about that?

A. Yes.

He tries to help them out as much as he can.

Q. Did he ever tell you that he fired Arroyo the first time?

A. No.

Q. And you didn't know he was fired the first time?

A. No.

Q. Now, would you tell us what happenes when things

get packed in a bad way, not consistent with the order?

A We get a complaint from the store that wrong amount is shipped, the company gets charged back for damages, we lose business and the whole thing. That's why we require that every package be checked good, every order be checked good, because it's too much expense to the company to send the goods all over the United State that are returned and the charge of double shipments and double cost.

Second, we can't control once there is one mistake to the store, the amount of goods that were shipped out to the people or to the stores that they claim us ten dozen. We can't check it out because when we go back to the packers that signed the slip by sending -- we have no recourse to take our loss of amount of money that when we check the invoice that the packer signs, says that he shipped out the amount of two dozen or ten dozen, whatever the amount is to be on that invoice. Now, we can't calim it to the store by saying, look, whatever it is. The store says, look, you made a mistake. The store a lot of times prove it to us that there were mistakes made in the Shipping Department, in the Packing, that these people did more than once.

Q Now, how many different contractors does Melange have working for it?

A About five or six or four.

Q And I assume that these contractors represent the balance of the production, other than Stoll?

A Right.

JUDGE PLAINE: Counsel, I didn't quite understand that.

Five or six contracts or contractors.

MR. PULVERMACHER: Contractors.

JUDGE PLAINE: I see.

BY MR. PULVERMACHER:

Q When I say contractors, Mr. Rossi, I mean doing similar work to Stoll.

A Exactly.

Q You visit their factories?

A Yes, sir.

Q You talk to the foreman of those factories?

A Yes, sir, and employees also.

Q And employees also?

A Yes, to the instruction of the quality that I want.

Q Now, you're a production supervisor for Melange?

A Yes, sir.

Q Or I might correct myself in saying the production

supervisor?

A. Yes.

Q. Are you a stockholder of Melange?

A. Yes, sir.

Q. Are you a stockholder of Stoll?

A. No.

Q. Are you a stockholder of any of the other contractors --

A. No, sir.

Q. Wait until I ask my question.

A. I'm sorry.

Q. Are you a stockholder of any other contractor with whom Melange does business?

A. No, sir.

Q. Now, Mr. Rossi, would you tell us why you go to Stoll the first thing in the morning?

A. Because the Shipping Department is over there and it's near my house, the first stop. Then I receive some of the goods because Melange ships from over there, for me to check it out when I receive it from these other factories, to see if there are any problems.

If there is not a problem, I go out and I see the other factories.

Q. Do I understand your statement that these other contractors ship their goods from their plants into --

A. Finished goods.

Q. -- into the Bush Terminal --

A. Right, and for us to ship out to the stores.

Q. And, in turn, they're shipped from there to the stores?

A. Yes.

JUDGE PLAINE: What is it that Melange does for --

MR. PULVERMACHER: Excuse me?

JUDGE PLAINE: What is it that Melange does for these contractors?

THE WITNESS: We do the same thing that we do for Stoll, we supply the --

MR. PULVERMACHER: The yarn.

THE WITNESS: -- the yarn for some and some of them we supply the cut material that they sew for us.

MR. PULVERMACHER: Let me go down that road.

JUDGE PLAINE: Yes, it would be useful.

BY MR. PULVERMACHER:

Q. Mr. Rossi, first of all, what's the end product that Melange makes?

A. A sweater.

Q. And I assume it starts with yarn.

Is that correct?

A. Yes, right.

Q. Does Melange supply the yarn to the contractors?

A. To the knitters.

Q. The knitters never own the yarn?

A. No.

It owned all the time by Melange.

Q. Then what is it, the knitter knits it up into long length of material?

A. Whatever the description is for me to knit.

Q. You mean the colors, the combination, the styles?

A. And everything, yes.

Q. And then it goes to a sewing plant?

A. Then it go to the cutting room. It's then cut. Then it goes to the sewing plants. Then it's returned to Melange as a finished product.

JUDGE PLAINE: It comes back to you as a finished product?

THE WITNESS: Yes.

Q. Now, Melange doesn't own any knitting machines?

A. No, sir.

Q. Does it own any sewing machines?

A. No, sir.

Q. Does it own any pressing machines?

A. No, sir.

Q. In effect, it owns really no machinery other than shipping equipment?

A. Design and selling.

Q. So when we use the term "manufacture," it's not an apt description of what Melange actually does, the manufacturing is done all by contractors; is that correct?

A. Right.

Q. And when you go to speak to these people, be it Stoll or the other contractors, Mr. Rossi, you only talk to them about the quality of production that's involved?

A. Yes, sir.

Q. When you tell people which style or what order or what production is to be done, is that within the general orbit --

A. That's it.

Q. -- of a production supervisor?

A. Right.

Q. Why do you tell these people what --

A. Because I know what has got to the store, they don't know.

Q. You mean the way the orders have been sold?

A. Yes.

Q So that's an activity of Melange?

A Right.

Q Is it customary in your trade, Mr. Rossi, that a production supervisor, for a company like Melange, goes into the plants that actually produce the goods?

A Yes.

Q Is it done throughout your industry?

A Throughout.

Q And somebody such as yourself deals directly with a foreman or, in odd instances, with the employee on the bench?

A Right.

If there's a question raised on the quality, then you go to the employees.

Q Do you have any stock in Stoll? I think you told us that already.

A No, sir, I don't.

Q Who, if you know, is a stockholder of Stoll?

A I know Stanley.

Q Do you know anybody else to be a stockholder of Stoll?

A I don't know. I no look at their books.

Q Does Stanley have any stock in Melange?

A No, sir.

Q Is he an officer of Melanage?

A. No.

Q. Are you an officer of Melange?

A. Yes, sir.

Q. And are you an officer of Stoll?

A. No.

Q. In your relationship with Stoll, he's no different from any other contractor?

A. The only thing that we ship from over there.

Q. You ship from over there?

A. That's the only contract relationship, that we ship to the store from there, where the other places ship in bulk to Melange and then we ship it out to the stores.

Q. Now, Mr. Rossi, turning your attention to Monday, June the 16th, did you see the young lady who just came off the stand?

A. Yes, sir.

Q. Would you tell us when you saw her, what you saw, what you sait to her, what she said to you?

A. What I meant to say to her was --

MR. BLYER: Objection, your Honor.

The question was not what he meant to say, the question was what he said.

JUDGE PLAINE: Yes.

A. What I said to her was that I got the job to

Stoll, I introduced her to Stoll to work over there and because of my importance with Melange, these people they never said nothing to me about her. They thought I had something to do with this girl being over there. I had nothing to do, I told her on the elevator, I said, if it were fore me, if you were working for me, you wouldn't work another day. That's it.

Then when I went to the plant, I saw the foreman that was coming over there. I says that Rossanna is outside. He said he'd take care of it. That's it. I worked over there with my own business.

MR. BLYER: Can I have it re-read. I don't think I got it all.

JUDGE PLAINE: Mr. Reporter, please.

(Record read.)

BY MR. PULVERMACHER:

Q Did you mean to indicate that you mind your own business, I think?

A I went and do my own business. I was not interested in what was going on there.

Q You had nothing to do with making the policy for Stoll?

A Yes, sir.

I just went and did whatever I was supposed to do with my own business.

Q Now, you heard some testimony, I believe, you were here all the time, to the effect that you ran to union meetings in January.

Would you tell us about what happened when the employees got together and why they got together?

A Yes.

Once you visit the factory and they see you on the premises, usually the employees, they become friendly, you know, with the person that give them the work. So one day -- and this not only happens over Stoll, other places that I visit.

Now, one day I went to Stoll, there was a little bit of confusion. If I remember correctly, Stanley Yagoda was in that day. I asked to explain to the girls that there was a little confusion because two unions.

JUDGE PLAINE: Confusion as to what?

THE WITNESS: 318 and 155, you know, the girls were all upset. To set them straight, I said that as far as I know, Stoll Industries has a contract with 318; and that's it.

BY MR. PULVERMACHER:

Q Did Mr. Yagoda ask you to explain this to the girls?

A No, sir.

Q. Who did?

A. The girls, the couple of girls asked me.

Q. Do you know if there were any other officers of Stoll on the premises?

A. No, sir.

Q. Were you present there the day Pete Olivieri had some kind of a union meeting in December?

A. I was in the place. I walked away from the meeting.

Q. You weren't at the meeting?

A. I was in the place. I walked away from the meeting, because it's none of my business, the union meeting.

Q. Would you clarify for me, it seems there was a question as to whether you spoke at one or two meetings in January?

A. Only once.

Q. One meeting?

A. One meeting that I clarified the girls what it was all about; that's all. I clarified what I thought it was all about.

Q. I think for everybody's benefit, it may be repetitious, but would you tell us again what you said in this meeting to the employees of the shop?

A. I told them --

Q This was employees of Stoll and Melange?

A Yes.

Melange had a few employees at that time. Whatever I said to them, some of thegirls they wanted to know an explanation from me what people downstairs, upstairs, I don't know, they were confused. And I said to them that as far as I know, that Stoll is signed up with this here union 318; and that's it. You see, this is supposed to be your union, that's all I know. And that's it.

Q Now, with respect to Mr. Arroyo's testimony that at sometime in December one of the supervisors brought him into the office, do you recall such a situation?

A Yes.

Q Would you tell us what happened, what you said to him and what he said to you?

A He just came in the office to find out what 318 represents.

I said to them that that's the union Melange sign up with and that's what I present. I no said to them what the union will give, you know, you have to look at the contract as to what the union is going to give you.

MR. BLYER: May we have a date on that meeting?

BY MR. PULVERMACHER:

Q Can you tell us about when this meeting with Mr. Arroyo took place?

A No, sir.

Q Before Christmas, after Christmas?

A I can't tell you.

Q Do you recall if the Melange people, the shipping and packing people, were supposed to work the Thursday and Friday after Christmas 1974?

I mean, did you work, let's say?

A What?

Q Did you work the Thursday and Friday after Christmas?

A Did I work?

Q Yes.

A I don't know. I think I was away.

Q Oh, as I recall, this young lady at the end of the table whose name at the moment I forget -- perhaps counsel can --

MR. YAGODA: Mrs. Guzman.

Q -- testified to a conversation in which she overheard you firing a cutter.

Do you recall such a conversation, I mean hearing it here?

A No.

Q Did you hear Mrs. Guzman's testimony --

A Oh, yes, I heard that, yes.

Q -- where she said she overheard you firing a cutter, you heard that?

A Yes.

Q Did you participate in any such incident?

A I spoke to the girl about leaving, I said, you know, where are you going? I do that in all of the factories, that it's my interest that the work of Melange be produced. I don't care who employees they are, still they work on Melange work and Melange pay for their payroll. I'm interested in their production. I got to watch to make sure that the interests of Melange that this work is done. I don't care which work it is.

Q As I recall the conversation, as testified to, Mrs. Guzman said that the man asked you for overtime and you said that there was no overtime.

A No, there was plenty of overtime. You know, he can ask me for overtime even though he's not working for me.

Q What do you mean?

A I know that Stoll was working overtime because they had Melange's work and I requested Stoll to work overtime on our goods because we had orders to meet.

I tell him to work otherwise the goods won't get delivered.

Q But is it your testimony that you had no controversy with this cutter?

A No, sir.

Q Do you know the name of the cutter she may be referring to?

A No.

MR. PULVERMACHER: One moment, your Honor.

JUDGE PLAINE: Yes.

BY MR. PULVERMACHER:

Q Did you even know the names of the cutters at Stoll Industries?

A Some I know.

Q Some you did and some you didn't?

A I don't know all the names.

Q Did you ever direct them or tell them what to do?

A Sometimes.

Q Or would you tell their foreman?

A The foreman.

Q Who is the foreman over there?

A Over there, Herman.

Q Emma?

A Herman.

Q If I gave you his last name, would you recognize his last name?

A Gomez or something.

Q Gomez?

A Gomez.

MR. BLYER: We stipulated it was Guzman.

MR. PULVERMACHER: Let the record show that the witness wasn't accurate on that point.

A Pulvermacher, can I --

Q One moment, please.

Do you recall a meeting in the office which Mrs. Guzman testified to as occurring on January 14th in which there was a discussion about signing cards for Local 318?

A Every time he's got a meeting, a private meeting in the office, I step out. I don't want to know what's going on.

Q Well, the meeting, as I understood the import of Mrs. Guzman's testimony, was that the foreman called you and Stanley was in the office at that time and the statement was made to the effect that the cards were on the side, Mr. Yagoda went by, by with a motion of closer between the index and thumb of the right hand.

Did you see anything like that?

A. No, sir.

Q. Did you hear Mr. Yagoda make anything like that?

A. No, sir.

Q. Is your hearing in good shape?

A. What?

(Laughter.)

Q. You hear relatively well?

A. I can't hear too good.

Q. Were you kidding around in that last answer?

A. No.

I no heard the question. Sometimes I can't hear too good. It's a crime?

JUDGE PLAINE: No, it's not a crime.

BY MR. PULVERMACHER:

Q. There was a witness here yesterday Milton who has a name I'm not going to try to pronounce. He's behind the pole (Indicating).

Is he a good worker?

A. Yes.

Q. Do you see him do a good job?

A. If I can see --

JUDGE PLAINE: As far as you see, is that what you said?

THE WITNESS: Yes.

MR. PULVERMACHER: We know you can't hear.

(Laughter.)

MR. PULVERMACHER: No further questions.

MR. BLYER: I have some questions.

REDIRECT-EXAMINATION

BY MR. BLYER:

Q Now, why did you tell Miss Narvaez on the 16th of June, that it it was up to you she wouldn't be working for you?

A Because every time I go to work, she's coming late in the elevator. That's the only reason.

Q Oh, so you noticed everyday that she comes late to work?

A Yes, quite a few times.

Q Why is that your business?

A Because I give out the job, I recommend her to the job.

Q Oh, you recommended her to the job?

A Yes.

Q So everyday you watched to see if she came on time?

A No, I no watch everyday. I no say I watch everyday. A lot of times I see because I reach the place nine o'clock later, and I see her.

Q See her what, work?

A Rossanna.

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Q She arrives to work a lot of times past nine?

A Yes.

MR. BLYER: Do you have her cards here?

MR. PULVERMACHER: Here.

(Handing.)

I assume General Counsel is about to impeach his own witness?

JUDGE PLAINE: Well, this isn't his witness.

He called him as an adverse witness under Rule 43B of the Federal Rules of Practice.

MR. PULVERMACHER: Sir, 43B is no longer in effect.

43B, I believe, has been declared ineffective in February and at the moment, I believe, there's a hiatus until July the first when the Federal Rules --

JUDGE PLAINE: The new federal rules come into effect in July.

MR. PULVERMACHER: Right now there's a hiatus.

JUDGE PLAINE: No.

The statute specifically says the new rules will take effect July one.

The old rules are still in effect.

Your facts are wrong, counsel.

MR. BLYER: May I have these marked, your Honor, as General Counsel's Exhibit #4.

JUDGE PLAINE: These are the timecards for whom?

MR. BLYER: Rossanna Narvaez from the week ending 10-19 through the week ending 6-7-75.

(The above-mentioned was received and marked as General Counsel's Exhibit #4 for identification.)

MR. BLYER: I've counted them, your Honor, and I count 34 cards.

BY MR. BLYER:

Q. I show you what's been marked for identification as General Counsel's Exhibit #4.

Would you quickly go through them and tell me how many times in those 34 separate weeks that Miss Narvaez is shown to have punched in after nine o'clock?

(Handing.)

MR. PULVERMACHER: Are you offering them into evidence?

MR. BLYER: No.

MR. PULVERMACHER: If these are Stoll records and he's a Melange employee --

MR. BLYER: If you have any objection, you make it.

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MR. PULVERMACHER: I'm making an objection about it at this point, yes.

JUDGE PLAINE: On what ground?

MR. PULVERMACHER: Because, you know, I tried to get these records in at the time when the witness was on the stand.

JUDGE PLAINE: Well, there was a different purpose in mind, counsel.

MR. PULVERMACHER: Well, your Honor, I --

JUDGE PLAINE: Now the whole thing has shifted. Now, we're on the question of credibility of the witness Rossi.

MR. PULVERMACHER: I'll also object to any answer on the grounds that this is just plain hearsay, unless this witness can even be relying on what is obviously hearsay.

JUDGE PLAINE: You're not going to impeach your timecards, are you?

MR. PULVERMACHER: No. He's doing it, I'm not.

JUDGE PLAINE: You're saying this is hearsay.

MR. PULVERMACHER: I'm saying the records, insofar as this witness is concerned, are hearsay.

THE WITNESS: What's the question?

MR. BLYER: Wait.

MR. PULVERMACHER: These are Stoll records being shown to a Melange witness.

JUDGE PLAINE: Yes.

MR. PULVERMACHER: So I'm saying as far as this witness is concerned, they are hearsay.

JUDGE PLAINE: But they are the business records produced out of the business files of one of the Respondents in this case whom you represent. I don't hear you suggest, counsel, that these records are inaccurate.

MR. PULVERMACHER: No, your Honor.

JUDGE PLAINE: Are you?

MR. PULVERMACHER: No.

I'm merely saying this witness relying on those records is the wrong way, it's inappropriate.

JUDGE PLAINE: How else are you going to --

MR. PULVERMACHER: I think we ought to put them in evidence, to which I have no objection, by the way.

JUDGE PLAINE: He's identified them. We'll see whether they'll go into evidence or not.

MR. PULVERMACHER: Well, if he's going to testify from what they say, without their being in evidence, then I object to that.

JUDGE PLAINE: Well, he can't -- he, the witness, Rossi, can't put them in evidence as such because he didn't keep them.

Your client Stoll kept them.

MR. PULVERMACHER: My objection to it, your Honor, is that the question asks for an answer based upon material which is not being offered into evidence, which I do not contest their validity of, so that I would like them marked in evidence.

JUDGE PLAINE: Would you waive the necessary proof of production so that they can go into evidence?

MR. PULVERMACHER: Sure.

JUDGE PLAINE: Well, let's put them in evidence, then.

Put them in evidence as G.C.-4.

Do you object to their going in, Mr. Blyer?

MR. BLYER: No, your Honor.

JUDGE PLAINE: The 34 cards are in evidence as G. C. 4.

(The above-mentioned was received and marked as General Counsel's Exhibit #4 into evidence.)

JUDGE PLAINE: Now, put the question, please, to the witness.

BY MR. BLYER:

Q How frequently did you note that Miss Narvaez came in after nine?

JUDGE PLAINE: From the records?

MR. BLYER: Yes.

A After nine or after 9:30?

Q After nine. You said --

A I have to check it again.

Q Well, was it frequently after nine?

A I don't know. You think in the morning I go there and look who is coming in late.

Q That's what I'm asking you.

How do you know that she was coming in late all of the time?

A I met her more than once downstairs.

Q You said very often.

A Eight-thirty is the time they start, counsel. If you go 8:30, it's more than once. If you go nine o'clock, it's less than a few times. If you go 8:30, it's more than once. 34 times if it's 8:30.

JUDGE PLAINE: Mr. Rossi, let's avoid the heat here.

Your testimony was that I noticed that Narvaez coming late everyday.

THE WITNESS: Yes, right.

JUDGE PLAINE: Everyday?

THE WITNESS: Yes, right.

JUDGE PLAINE: Well, now, the question put to you how many day do you observe from the time-cards that she has come in late?

THE WITNESS: Yes, sir.

But I have to explain what do you call is late, nine o'clock or 8:30 is late. After 8:30, also, because I wnat the witness over here say that 8:30 is the starting time.

MR. BLYER: Your Honor, his testimony was that he saw her coming late everyday after nine o'clock. My question was, based upon the timecards, how often does it reflect that she came in after nine. Now, that they're in evidence, I don't need the answer.

JUDGE PLAINE: All right.

BY MR. BLYER:

Q The timecards reflect that she wasn't late after nine too often.

Did you ever speak to her about those being late on those occasions when she was late?

A. Yes.

Q You did speak to her?

A. Yes.

What happened, what you say, you just come in?

That's all.

Q And if you speak to other employees from Stoll who came in after nine o'clock or after 8:30?

A No.

Q Just Rossanna Narvaez?

A Yes.

Q Weren't you responsible also for getting employees who formerly worked at Harborview for you, working -- who were now working at Stoll?

Didn't some other employees come over from Harborview besides Rossanna?

A Yes.

Q But you weren't checking on them?

A Because they were there all the time.

Q Oh, just Rossanna?

A Yes.

Q You know that they were there all the time even though you didn't check?

A I no check because I just happened to meet her in the elevator. I don't meet the other people in the elevator.

Q Oh, the times that Rossanna was late, you happened to meet her in the elevator all the time?

A All the time, yes.

Q Oh, I see.

And you never met any other employees who were in the elevator when they were late?

A. Yes.

Q. Oh, you did?

A. Sure.

Q. And would you inquire of them why they were late, too?

A. I never recommend them for a job.

Q. I'm talking about --

A. I never recommend them for a job.

Q. What about employees who you did recommend for a job?

A. What?

Q. What about employees who you did recommend for a job?

A. I never saw them late.

Q. You never saw them late?

A. No.

Q. But you were watching to see if they were late?

A. I'm not watching nobody.

Q. How do you know they weren't late?

A. Because I told you after 8:30, I meet them in the elevator, I think they're late; that's all.

MR. PULVERMACHER: I think this line of questioning has been developed sufficiently.

JUDGE PLAINE: Oh, I don't know. Let's have a little patience.

MR. PULVERMACHER: I wish the Court would be as patient with me.

JUDGE PLAINE: Well, now, just a minute, counsel.

You've gotten, you know, lots of room. I haven't cut you off except in one or two places where I thought you had finally exhausted the line of questioning.

I object strenuously to your being critical of how I'm running this hearing. Now, I will not take this anymore, counsel, I've been liberal with you. Now let's stop it right now.

BY MR. BLYER:

Q Mr. Rossi, what other employees did you recommend for jobs that formerly worked for you at Harborview or that worked for you elsewhere or just that you knew?

How many other employees did you recommend to work at Stoll?

A About four, five.

Q Can you give us the names?

A Julia.

Q Is that Julia Perez?

A No.

Q Julia who?

A I don't know her second name.

Q Is she still working there?

A Yes.

Q Anyone else?

A Rita.

Q Rita?

A Yes.

Q Is that the chairlady?

A Yes.

Q Go ahead.

A Philamena (Phonetic).

Q Vuoso?

A Yes.

Q V - U - O - S - O?

A Right.

I don't even remember the other girl's name. There were a couple of more girls, but I don't remember their names. Another one was Christian.

Q Christiana Munoz?

A I don't know her second name.

Q Is it your testimony, Mr. Rossi, that employees like Rita and Christiana never came in late?

A Yes, Rita comes late.

Q Doesn't she come in late very often?

A Yes, sir, because the deal was made to come in at 9:30 with her.

Q And does she come in at 9:30?

A 9:30 and nine o'clock and all the time like that.

Q What about late in the sense of --

A The boss agree when the deal was made that she had to come in after the baby goes to school.

Q What's the deal? What was the deal?

A To come in late, it's all right for her to come in at 9:30.

Q How do you know about that deal?

A Because I recommended the girl. You're asking me who recommend; right?

Q Correct.

A And I recommend her.

Q And you know the terms and conditions -- you knew --

A Because she ask me to recommend -- if I can get her the job to work after nine o'clock because she got kid that's got to go to school. They agree that she can get the job.

Q What about Christiana, didn't she come in late?

A Once in awhile late. I don't say no. I don't say no.

Q Okay.

And do you speak to them, too, about coming in late?

A No.

Q Well, what is the difference --

A Because it's not that often that I see her, it's not that often that the employees raise a question that the people who I recommended late. They raised the question about Rossanna, why you told us you take this girl that she comes in late.

Q Oh, the company --

A Stoll Industry asked me that question. They don't ask me about the other people.

Q Oh, I didn't understand that.

You say that Stoll Industries -- who particularly brought it to your attention that Rossanna was coming in late?

A Carmelo, the foreman.

Q Carmelo?

A Yes.

Q Why wouldn't Carmelo speak to Rossanna directly?

MR. BLYER: Withdrawn, your Honor.

A I --

Q There's no question.

JUDGE PLAINE: There's no question before you.

THE WITNESS: All right.

BY MR. BLYER:

Q Now, you say you hold one meeting of the employees --

A I no say I hold no meeting.

Q -- at the shop --

A I say I explained it to the girls.

Q Well, didn't you call the meeting?

A I explained -- I got all the girls altogether to help out.

Q How did you get them altogether, how did you do that?

A What?

Q How did you get them altogether, how did you do that?

A I don't know which way I did. The foreman stop the machines. He call them altogether, I no call them.

Q Who stopped the machines?

A The foreman.

Q How did the foreman know to stop the machines?

A Because he said there was too much confusion, if you can explain it to the girls, and so I did.

Q And the foreman --

A Any confusion in the shop was Melange involved

goods that we ship to the stores.

Q Okay.

A It was my interest to make sure that the shop runs properly, also.

Q Okay; good.

Now, Mr. Rossi, did the foreman ask you to speak to the employees?

A The girls and the foreman say that we have a confusion here, so if you can straighten them out. Okay.

Q But it wasn't the girls who stopped the machines, it was the foreman?

A Yes.

Q And the foreman asked you to address the people, to speak to them?

A Yes, sir.

Q And you spoke to the Stoll employees and the Melange employees; is that correct?

A Right.

Q Now, do you recall an occasion where Mr. Arroyo came into the office and he asked questions -- and there were questions and answers regarding 318?

A Yes, he asked me if he's got to sign a card for the union. I say yes, that Melange belongs to 318.

Q Did he come in on his own?

A. Him and another guy; I don't remember.

Q. Well, was it Mr. Vargas?

You say Mr. Vargas here.

Was that the man?

A. Yes.

Q. They both came in on their own?

A. Yes.

Q. Well, how did that conversation come about?

You were sitting in the office?

A. Yes, I was sitting in the office. They must have a problem with the head of the Shipping Department. I don't know what was going on. They came into my office for me to explain it to them, or because maybe they want me to get involved; I don't know. Because, you see, I don't know what happened. They came to me and they explained to me what the problem was. I explained. That's all.

Q. What did they ask you?

A. They asked me if this is the union that we belong. I say yes, this is the union that Melange belongs.

Q. They asked you if this was the union?

A. Yes.

Q. You didn't tell them that that was the union?

A. Told them, asked me. It was a conversation about

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the union.

Q You don't know if they asked or you told them?

A They came in to me, they must have asked me about something. I no call them in the office.

Q All right.

A They came to see me in my office.

Q At that time, you knew that you had a contract with Local 318?

A Yes, sir.

Q Do you know a Mr. Greenbaum, Arthur Greenbaum?

A I don't know.

Q What does that mean, you don't know him?

A No, I don't know him.

Q You don't know him?

A I might know him. I don't know.

Q Didn't he work as a cutter for Stoll?

A So many people they working for -- I don't know all of the people.

Q Wasn't this the gentleman who was fired on January 14th by you?

A Nobody ever got fired by me.

Q But you were able to recommend people for hire?

A Yes.

Q And those people you recommended, were they all employed by Stoll?

A Right now?

Q No, no.

After you recommended them, were they hired?

A Some of them and some not.

Q And you say that at least five who you recommended were hired?

A Right.

Q Can you name any individuals who you recommended who were not hired?

A No, I can't.

Q You can't at all?

A I can't.

Sometime you meet the people downstairs and they said to get a job and I bring them up. I don't remember these people. I recommend them. To me it looks good. They say they don't need them. I don't know, I takeover the book with my pocket and look at the names. They got people there who do that.

Q You were talking before how your job is to oversee the work, to check the work.

Is that correct?

A Yes.

Q I guess you have to do that pretty diligently, carefully?

A No.

Q You don't?

A Spot check it.

Q Oh, you spot check it?

A Yes.

Any time I feel like to check, I check. Nobody is over me to tell me when I got to check it.

Q But that's your main job there to make sure that the goods are good?

A That's one of the main jobs.

Q That's one of the main jobs?

A Yes.

Q And I suppose you have from time to time errors being made?

A Yes.

Q In all departments?

A Yes.

Q How often would you say errors are made?

A Sometime ten a day, sometime not even one. I can't answer that question. It's a human thing.

Q Would you say that errors are made on a daily basis, everyday?

A No, no.

Q On a weekly basis?

A It all depends sometime on the employees, if you got some bad employees, then it's made on a daily basis.

If you got good employees, it's not.

Q And usually you have a mixture of good and bad; right?

A. What?

Q Usually you have a mixture of good and bad?

A. We try to keep the good and get rid of the bad.

Q And some employees even make ten errors in a day?

A. Maybe.

Q What do you mean maybe? You said it, not I. Is that correct?

A. I don't check all of the goods.

Why you referring to what kind of errors?

Q I thought you told me that some employees make ten errors in a day.

A. Yes, sometimes. It's not unusual for only there, it's usual in all of the factories.

Q So it's a common thing to make errors in this industry?

A. No.

Q No?

A. No.

Only if they are not responsible people.

Q Only what?

A. Only if they are not responsible people.

Q I see.

MR. BLYER: That's all I have, your Honor.

Thank you very much.

JUDGE PLAINE: All right.

Anything further, counsel?

MR. PULVERMACHER: One further question, your Honor.

RECROSS-EXAMINATION

BY MR. PULVERMACHER:

Q Did you ever give Carmine or Norris the union cards to give out?

A No, no.

MR. PULVERMACHER: No further questions, your Honor.

JUDGE PLAINE: I have one question that puzzles me a little bit, Mr. Rossi.

You say that when you go into the shops of your contractors, you attempt to spot check the kinds of work that are being done?

THE WITNESS: Yes.

JUDGE PLAINE: Aren't these contractors pretty expert people?

Aren't the contractors themselves pretty expert in manufacturing?

THE WITNESS: Yes, they supposed to be.

JUDGE PLAINE: Don't they have expert supervisors?

THE WITNESS: Maybe I can explain.

JUDGE PLAINE: Oh, sure.

THE WITNESS: They're supposed to be expert otherwise we will not give them the work.

JUDGE PLAINE: That's what I would assume, yes.

THE WITNESS: Also, they got specification from me to follow; in other words, two inches or three inches.

JUDGE PLAINE: Yes.

THE WITNESS: What's considered two inches and what's considered three inches, it's up to me to decide it's good or not. They watch how much they can. It's up to me if I decide on the specifications of the sweater, if it's knitted right or wrong.

JUDGE PLAINE: So this requires your daily inspection each day to see if --

THE WITNESS: Yes, sometimes.

The amount of styles that we produce so much, it requires me to check it out. And everybody in the Shipping Department, they got orders. Every

style that comes in, it's got to be checked. They put the garments, whatever it is, in my office for me to check it out.

JUDGE PLAINE: Is this true for all six contractors?

THE WITNESS: All six contractors.

JUDGE PLAINE: Are they all in the same location?

THE WITNESS: In Brooklyn and some in Jersey. They come from all over.

JUDGE PLAINE: So you travel around from contractor to contractor?

THE WITNESS: Sometimes, you know, when it's necessary for me to go there, when it's required for me to go there, I go. If I can settle it through the telephone, I call. It all depends on the problem. You know, I can't specifiy exactly. If it's a big problem that requires my attention, I go there. If not, I can explain to them through the phone that the garment is not pressed right or whatever minor things that I want them to do, to finish it better. I tell them through the phone. They submit the sample before they go ahead. Then I okay it.

JUDGE PLAINE: Where do you spend most of your working day?

THE WITNESS: At the Stoll --

JUDGE PLAINE: At the Stoll place?

THE WITNESS: Yes.

JUDGE PLAINE: I see.

I have nothing further.

MR. BLYER: Nothing, your Honor.

Thank you.

MR. PULVERMACHER: Nothing, your Honor.

JUDGE PLAINE: You're excused.

Thank you.

MR. PULVERMACHER: Your Honor, may we take a break at this time?

JUDGE PLAINE: Yes.

(Recess taken at 3:45 P. M.)

(Resumed at 4:10 P. M.)

JUDGE PLAINE: Let's go back on the record, gentlemen.

Gentlemen, ladies, please, please, so the Reporter can hear what's going on.

Mr. General Counsel, subject to your examination of the two books, of the records of the Respondents, and the possibility that you might wish to add something to your case based on that examination, have you concluded the General Counsel's case?

MR. BLYER: Yes, your Honor.

JUDGE PLAINE: Very good.

Then we can proceed with the Respondent's case.

MR. BLYER: May I just state one thing, though?

JUDGE PLAINE: Yes.

MR. BLYER: There was some confusion today with regard to some of the witnesses who testified -- and I use the word "confusion" perhaps as a euphism. But there was some consuion today with regard to their returning to work yesterday.

I'd like Respondents to know that to expect any employee who has testified to date, to be at work tomorrow and that they should make plans, if plans are necessary. I think that I want Mr. Rossi to know, because there was some confusion today with regard to employees returning to work.

MR. PULVERMACHER: May I suggest that the testimony --

MR. YAGODA: Are you talking about --

JUDGE PLAINE: Please.

MR. PULVERMACHER: -- may I suggest that the testimony to date is that when they are out a day, that they call in and work is prepared for the following

day and that they follow the standard procedure.

You intimated an implication in that that I'm not sure you fully understood what you were saying. You were saying that when they testified yesterday, there was confusion when they went in today.

MR. BLYER: That's all I'm saying.

MR. PULVERMACHER: I ask you that if they will follow the procedure of the plant to call in and say that they would be in tomorrow --

MR. BLYER: Let's not get into the merits.

There is no charge at this point.

The case before the judge has not changed. Nothing has changed.

I just want your client to be aware and you to be aware that the employees are returning to work tomorrow. That's all.

MR. PULVERMACHER: Would you please ask them to follow the usual procedure of calling in so that their department head will be proper notified?

MR. BLYER: I don't know if that's the usual procedure.

If it is and they don't follow it, then you do what --

MR. PULVERMACHER: Arroyo testified to

that.

MR. BLYER: If it isn't the usual procedure, then you do whatever you want to do if they don't follow it.

JUDGE PLAINE: Gentlemen, please.

Are you suggesting that these witnesses are still under subpoena for the purposes of possibly rebuttal if they are needed?

MR. BLYER: Well, that's true, your Honor.

You know, at this point I don't anticipate them being rebuttal witnesses. I just want the employer to know that I anticipate that they will be released today from their subpoena and be reporting for work tomorrow; that's all.

JUDGE PLAINE: Well, can we be sure of that until the Respondent's case is in?

MR. BLYER: My employees will stay here with me.

JUDGE PLAINE: Make your announcement to them after we -- at the point we're about to break up this afternoon, counsel.

MR. PULVERMACHER: Your Honor, the plant is going to close in about 15 minutes. Work has to be laid out starting at four o'clock.

May I suggest that we have an adjournment, I'm sorry this didn't come up previously --

JUDGE PLAINE: No, I'm not going to adjourn the case at this time.

MR. PULVERMACHER: So that somebody can go outside and tell the plant that they'll be in tomorrow, give me the list of the people who are here and I will see that it's done.

MR. ROSSI: There is enough time for them to prepare work for tomorrow morning.

MR. YAGODA: You got to let me know.

I have to tell them that these people are coming in, they have to sew on the machines, they have to have work by the machines. They're not going to stand there for two hours to have work --

MR. PULVERMACHER: All I'm saying is to have a two-minute recess to get their names into the factory so there will be work laid out for them to work tomorrow. I'm sorry it wouldn't come up earlier today.

JUDGE PLAINE: How long will it take to just read off these names?

MR. BLYER: They know. They're right here.

Rousanna Narvaez. Julia Perez's daughter

is graduating tomorrow and she wants to be excused on tomorrow.

MR. PULVERMACHER: But she'll be in Monday?

MR. BLYER: That's what I'm informed.

MR. YAGODA: Romanita?

MR. BLYER: Yes, and Elli Villa.

MR. PULVERMACHER: With the permission of the Court, may Mr. Yagoda be excused for a minute or two. We can proceed in his absence.

JUDGE PLAINE: Is he your next witness?

MR. PULVERMACHER: Sir?

JUDGE PLAINE: Is he your next witness?

MR. PULVERMACHER: No.

I'll work around him.

JUDGE PLAINE: All right.

MR. PULVERMACHER: Let the record reflect --

JUDGE PLAINE: I don't expect that this is part of the record in this case.

MR. PULVERMACHER: It became so because counsel made it part of the record.

MR. BLYER: I didn't intend to.

JUDGE PLAINE: I don't think it was intended to and I don't want it part of the record. It has nothing to do with what we're dealing with here.

This is a matter of your daily business, your client's daily business.

MR. PULVERMACHER: In a routine fashion. But General Counsel purposefully put it on the record.

JUDGE PLAINE: I don't think he intended that.

MR. ELYER: I would move, your Honor, if it's on the record, to expunge it from the record physically.

JUDGE PLAINE: Yes, I will direct the Reporter to expunge this conversation about who is working where.

MR. PULVERMACHER: Let me ask, why did you wait 'til now when we just had an adjournment instead of speaking to me in an ordinary attorney-to-attorney fashion?

JUDGE PLAINE: Mr. Pulvermacher, you are really drawing this out.

I don't want this in in this case. This has nothing to do with the case.

MR. PULVERMACHER: I think this is an unfair tactic that General Counsel is employing.

JUDGE PLAINE: Come on. Let's get on with the case.

MR. PULVERMACHER: I'm ready to, sir.

I call Norris Orie to the stand.

Whereupon, NORRIS ORIE, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. PULVERMACHER:

Q Would you please state your full name?

A Norris Orie.

Q What's your position with the employer?

A Traffic Management.

JUDGE PLAINE: Do you spell your name O - R - I - E?

THE WITNESS: Yes.

JUDGE PLAINE: Thank you.

BY MR. PULVERMACHER:

Q And do you work for Stoll or Melange?

A Melange.

Q How long have you worked for Melange?

A Since last September. I started there last September.

Q And did there come a time, Mr. Orie, when Arroyo was under your supervision?

A Yes.

Q Would you tell us about Arroyo?

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A. I --

MR. BLYTH: Objection, your Honor.

The question is much too broad.

JUDGE PLAINE: Yes.

Let's narrow it down.

BY MR. PULVERMACHER:

Q. Did there come a time when you had reason to discuss or tell Arroyo of problems that were existing by reason of his work?

A. Yes.

Q. Would you tell us about those problems and what you said to him?

A. The only problem I have with Arroyo was about making mistakes.

Q. What kind of mistakes was he making?

A. He was packing wrong.

Q. How did he do that?

A. Well, I would like to make a little explanation.

Q. Excuse me?

A. I would like to make a little explanation.

Q. Please go ahead.

A. When I bill the invoices out, first I get the order picked. Then I bill the invoices out. When I finish billing the invoices out, I give it to the packers. They're supposed to take the invoices, pack

the merchandise against the invoices into the boxes. Now, they got to pack it by style, color, pieces and sizes.

Well, he makes a couple of mistakes, a good few mistakes, he made about five, six, seven mistakes and I'm trying everyday, you know, to try to correct them, you know, to try to keep on them, trying to correct them to, you know, correct the mistakes so there won't be anymore mistakes.

Finally I don't think he could have worked out.

MR. BLYER: I'm sorry, I didn't hear that.

JUDGE PLAINE: Me neither.

A. I don't think he could have worked out because he was making too much mistakes.

MR. PULVERMACHER: Work out, not walk out.

A. (Continuing)

He was packing wrong, the wrong styles, the wrong sizes.

I realized that Eddie was packing the boxes wrong. I took all the number two copies that he had packed, checked it against the orders, and I finally realized that he packed them wrong. That's the only way I could know that he was packing them wrong.

Q. These number two copies had his initials?

A. His signature.

Q What did his initials or the number two copy mean?

A Well, it had E. He packed the box.

That's what it means.

Q And it was his job to check the material against that invoice?

A Right.

Q And did there come a time when he was fired in December 1974?

A I fired him for the same thing, making the mistakes.

Q Who did the firing in December?

A I did the firing.

Q Did anybody tell you to fire him?

A No.

Q Now, when did he come back to work?

A He came back about -- now, I can't say exactly, but I would say about two or three weeks after. He came back to see Carmine.

Q He came back to see who?

A To see Carmine, because the mistakes he was making, you know, I couldn't have him doing anymore packing. He came back to see Carmine to see if he could get something else to do. So we had some credits to do. And from there I think Carmine took him to do

credits. He was fired again, but I don't know for what.

Q You weren't involved with the second firing?

A No, no.

Q Is there any doubt that he was fired in December by you?

A The first firing was by me.

Q The first firing?

A Yes.

I don't know about the second.

Q Did you tell him to call in?

A To call who?

Q In December, after you fired him, did you tell him to call in?

A To call Carmine?

Q To call in the following days to see if there was work.

A When I fired him, he said he wants to see Carmine. But Carmine wasn't in at that moment.

He went out, he came back a couple of days after to see Carmine. I think Carmine placed him on a -- you know, he had something to do --

MR. BLYER: Objection, your Honor.

I would move that the last answer be stricken as not being responsive to the question.

JUDGE PLAINE: I can't even remember what the question was.

MR. BLYER: The question was, your Honor:

Did you tell Mr. Arroyo to call in after you fired him?

THE WITNESS: No.

MR. BLYER: And he told us about something else.

JUDGE PLAINE: Why don't we start over again?

Strike that and let's start over again, counsel.

Now, the question was what?

MR. BLYER: Go ahead.

BY MR. PULVERMACHER:

Q Did you ask him to call in after you had fired him?

A No.

Q Was he fired by you in December or was he laid off?

A He was fired.

Q Was there any slowdown of work after Christmas in '74?

A After Christmas, a little.

Q A little?

A Yes.

Q Would it have been enough to lay a man off?

A No.

But it would have been enough to, like, bring them in a hour later or so.

MR. PULVERMACHER: I have no further questions.

CROSS-EXAMINATION

BY MR. BLYER:

Q About Mr. Vargas, the records show that Mr. Vargas did not work the week ending January 4th, 1975.

Why?

A The week ending 1975?

Q The week ending January 4th, 1975.

Why didn't he work, sir?

A I can't recall.

Q Was it poor performance on the job?

A I didn't lay nobody off.

Q I asked you if it was poor performance on the job.

Was his work bad?

A No, no.

Q He just didn't come in, you're saying?

A He just didn't come in.

Q But you didn't fire him for not coming in for a whole week?

A No.

Q You just let him go back to work?

A Go back to work, yes.

Q Was he calling you up and telling you why he couldn't come in?

A Yes, he did.

Q Oh, he did?

A Yes.

Q And what was his explanation?

A Well, he just said -- I think he said he was sick.

Q He was sick?

A I think he said he was sick.

Q And now you had one man out, Mr. Vargas, and you just lost Mr. Arroyo, two men --

A I fired Arroyo.

Q You fired Arroyo and you had Mr. Vargas out?

A Well, he called up sick.

Q You say he called up sick for a week, a whole week?

A Yes.

Q And you managed, though?

A Yes, I managed.

Q. But I thought you said you really couldn't afford to layoff a man?

A. I didn't lay him off, he called up sick.

Q But he didn't work, did he?

A. No.

I worked short with a man.

Q And you worked short of two men actually?

A. I fired Arroyo.

Q But you're down two men now?

A. But business wasn't that fast.

Q You said before that it was slow but only such that you maybe had to ask one man to come in an hour later.

A. Right.

Q But you just lost two men.

A. I know.

Q You didn't get any replacements?

A. No.

Q You didn't know when Mr. Vargas would be back, did you?

A. No, but I couldn't rely on him to be back because when he called up sick for one week --

Q I agree with you. He may have been out for a very long time.

Now, you directly supervised Mr. Arroyo; correct?

A. Yes.

Q. Not Carmine?

A. No.

Q. You know nothing about the time that Mr. Arroyo came into work and did not find his card in the rack and asked you where it was?

You know nothing about that?

A. No.

Q. Didn't happen?

A. No.

Q. Did you --

A. Not that I know of.

Q. Not that you know of?

A. Not that I know of.

Q. And CArmine fired him on his own?

A. The second time?

Q. Yes.

A. Yes.

Q. On his own?

A. Yes.

Q. Did you speak to Carmine about the problem there was?

A. No.

Q. No?

A. No.

Q Carmine knew about the problem?

A The second time he fired him on his own.

Q On his own?

A Yes.

Q And you had no conversation with Carmine about Mr. Arroyo?

A No.

Q Now, Mr. Arroyo is not the man who goes out into the shop and picks the orders, is he?

A No.

Q So if the order was picked incorrectly and Mr. Arroyo didn't pick up the error, thing thing is going to be pakced incorrectly; isn't that correct?

A Well, I would put it like this: --

Q All right.

A If the order is picked wrong --

Q Yes.

A -- the packer is supposed to correct it.

Q Yes, right.

And --

A So --

Q Okay.

You've answered my question.

A And so if tne order is picked wrong, when the packer is checking, style, color, pieces and styles,

he's supposed to recover the mistake.

Q Absolutely.

And if he doesn't, then the stuff goes out wrong?

A. Yes.

Q What about you?

Do you have any job there?

Are you supposed to check on what the pickers do?

A. Well, all I got to make sure is to see that everybody gets work.

Q You're in charge of getting the work out?

A. I'm in charge of the whole Shipping Department.

Q Do you ever check the tables to see if --

A. Pardon me?

Q Do you ever check the tables where the pickers put the work where they have picked, before the work is packed?

Do you ever check to see if the pickers have picked the work correctly?

A. Once or twice.

Q Once or twice what, a day?

A. A day.

Q A day?

A. Yes.

Q I see.

Now, do you know the particular order that Mr. Arroyo was supposedly -- was supposed to have packed incorrectly when he was fired?

MR. PULVERMACHER: In December, January or February?

MR. BLYER: I'm only talking about January.

A. There was quite a few, but I can't recall it.

Q. Oh, there were quite a few orders now that he packed incorrectly?

A. As I said, there were a lot of mistakes he made.

Q. In that day?

A. Not in that day.

When he makes mistakes, you know, three, four mistakes for the week.

Q. Oh, three, four mistakes every week now?

A. Yes.

Q. Oh, I see.

But it was only on January 22nd that he was fired or January 29th that he was fired, he was making mistakes all along?

A. Well, he make mistakes all the time.

Q. All the time?

A. You know, I keep on -- I keep on him, you know,

trying to correct him, how to do the job properly. You know, he keeps on making the same thing.

Q I see.

But you didn't fire him -- but you never fired him the second time?

A No.

Just the first time.

Q Now, you don't know the particular mistake he supposedly made that led to his second discharge, do you, the second firing?

A No.

Q Do you know what he did wrong?

A All I know is he packed something worng. It was a very big mistake.

Q How did you learn that? How did you learn that

A Well, I recovered the mistake. The showroom called me up. They said that such and such order was wrong, it was shipped short. It was quite a few pieces; I can't recall how much at this time.

So what I did, they give me the invoice number. I went and checked the invoice number towards my duplicating in the office. I see Eddie Arroyo packed it. So I can't tolerate anymore from him, I had to let him go.

Q Wait a second.

Are you telling me now that you said you had to

let him go?

A. I fired him.

Q. You fired him the second time?

A. The first time, not the second time.

Q. I'm talking about the second time. I told you that before. I'm talking about January 22nd or January 29th, the end of January. I'm asking you if you know the particular order that he messed up on supposedly that led to him being fire?

A. No, no.

Q. You don't know anything about that?

A. No, not the second time.

Q. Not the second time?

A. No.

Q. So you couldn't have told Carmine what happened, you couldn't have told Carmine what happened?

A. When? The first time?

Q. The second time.

A. No, no.

Q. The second time?

A. No, no, not the second time.

Q. It was Carmine who fired him the second time; is that right?

A. Yes.

Q. And Pete Rossi couldn't have told him because he

didn't know, either; is that correct?

A. He didn't know, no.

Q. All right.

Did anything happen to any picker that was involved in supposedly picking the order incorrectly?

A. Well --

Q. Was any picker fired?

A. No, I don't fire any one of the pickers.

Q. Well, was any picker fired?

A. No.

Q. You work there. You must know.

A. No picker was fired.

Q. Was any picker reprimanded?

Do you know what reprimanded means?

A. No.

Q. Pardon me?

A. No.

Q. Warned, threatened with being fired.

A. Not threatened.

Q. No?

A. No.

Q. Well, who was the picker that made the mistake?

Do you know?

A. No.

Q. Was there -- you made no investigation to find

out, did you?

A Well, there isn't any way I could know who picked the orders because I have about four or five pickers.

Q Did you question any of the pickers?

A Well, nobody who says who picked the order.

Q I asked you if you questioned them.

A Yes, I asked them.

Q You asked who picked the orders?

A Yes.

Q Nobody knows.

Q Did you warn them?

A Nobody knows.

Q Did you warn them?

A Yes.

Q You couldn't figure it out?

A No.

Q Did you ask Mr. Arroyo or Mr. Vargas, who was standing by the table, who picked the order?

A No.

Q So you just went to the pickers, that's all, and you asked them, and they said no, so you dropped the whole matter?

A But as I said, when the picker picks something, all I comes to is the packer who packed it. If the

packer packs it wrong, it means it's the packer's fault.

Q. What do you pay a picker for?

A. What do you pay a picker?

Q. Why is a picker paid every week, for doing what?

A. To picking merchandise from the orders.

Q. To pick it correctly or incorrectly?

A. Correctly.

Q. Would you say he's not doing his job if he's picking incorrectly?

A. I would say so.

Q. And would you keep a picker who was picking incorrectly?

A. No.

Q. Just like you wouldn't keep a packer who was continually picking incorrectly; is that right?

A. Yes, you're right.

Q. But this picker, whoever it was, was kept?

A. Well, I didn't know who was the picker.

Q. Did you know at all that Mr. Arroyo made this second error?

A. Pardon me?

Q. Did you know at all --

A. Yes.

Q. -- did Mr. Arroyo had made an error that led to --

supposedly had made an error that led to his discharge the second time?

A. The second time?

Q. Yes.

A. No.

Q. No?

A. No.

Q. But then nonetheless you went to the pickers and asked them about an order that was made incorrectly?

A. Pardon me?

MR. PULVERMACHER: I think the witness is confused. You've jumped from one time to another time.

MR. BLYER: I'm still in the second time.

JUDGE PLAINE: He's only talking about the second event at this time.

MR. BLYER: I may have confused the record a little. Let me try to clear it.

BY MR. BLYER:

Q. Your testimony is that up until this day, you don't know what, if anything, Mr. Arroyo did that was wrong the second time he was fired?

A. Right.

Q. Now, when did you first learn that he did something wrong?

MR. PULVERMACHER: The first or the

second time?

MR. BLYER: The second time he was fired.

BY MR. BLYER:

Q When did you learn he did something wrong? Before today?

A I never knew he did anything wrong when he was fired the second time. All I knew is when I fired him, how many mistakes he made and I fired him.

Q And that was the first time?

A Yes.

Q But when did you learn that he did something wrong that led to his discharge the second time?

A I never knew about anything wrong.

Q Oh, you didn't know he did anything wrong?

A Not for the second time.

Q I'm just telling you this for the first time; is that right?

A Pardon me?

Q I'm telling you this for the first time, as far as you know?

MR. PULVERMACHER: I think the counsel is --

JUDGE PLAINE: Wait a minute.

The question is:

Are you learning for the first time in this

trial --

THE WITNESS: I'm speaking about the first time.

JUDGE PLAINE: -- for the first time in this trial that Mr. Arroyo was fired for doing something wrong?

Is that what you're saying?

MR. BLYER: Yes.

THE WITNESS: Say that again, please.

JUDGE PLAINE: Are you learning for the first time now in this trial that Mr. Arroyo was fired the second time in January 1975 for doing something wrong about his work?

THE WITNESS: He was fired for the second time?

JUDGE PLAINE: Yes.

THE WITNESS: No.

JUDGE PLAINE: Well, when did you learn that he was fired the second time and for what reason?

THE WITNESS: When he already got fired.

JUDGE PLAINE: Right after he was fired?

THE WITNESS: Yes.

JUDGE PLAINE: Did you know the reason at that time?

THE WITNESS: No.

JUDGE PLAINE: Do you --

THE WITNESS: All I know is that Eddie Arroyo got fired.

JUDGE PLAINE: And when did you learn the reason?

THE WITNESS: After he left there.

JUDGE PLAINE: Did you learn it here or did you learn it at the plant?

THE WITNESS: On the job.

JUDGE PLAINE: On the job?

THE WITNESS: Yes.

JUDGE PLAINE: And who told you that?

THE WITNESS: Then I had a discussion with him.

JUDGE PLAINE: Carmine told you?

THE WITNESS: Yes.

JUDGE PLAINE: How soon after he was fired did Carmine tell you the reason why he was fired?

THE WITNESS: How soon after?

JUDGE PLAINE: Yes.

THE WITNESS: It's about the same evening.

JUDGE PLAINE: The same evening that he was fired?

THE WITNESS: Yes.

JUDGE PLAINE: I see.

Go ahead, counsel.

BY MR. BLYER:

Q Is it your testimony after that you questioned the pickers about him being fired?

A I always warned the pickers about picking the orders.

Q No, no, that's not my question.

After you learned that Mr. Arroyo had been fired for packing something wrong --

A Right.

Q -- did you question any of the pickers about the order?

A About picking the order?

Q Yes.

A Yes.

Q Okay.

Did Mr. Carmine Minichino question the pickers?

A No.

Q But you were unable to -- but no picker was fired because of that?

A No.

Q Is it fair to say any time a packer makes a mistake, a picker has also made a mistake?

A Repeat that again.

Q Does every time a packer make a mistake, a picker also makes a mistake?

A Well, if the picker make a mistake, if the picker make a mistake, the packer is not supposed to make a mistake.

Q I know that.

But every time a packer makes a mistake, isn't it true that a picker, too, has made a mistake?

A It could be possible.

Q Isn't it more than it could be possible?

Doesn't it have to be that way?

A Well, the both of them don't make a mistake together. Like, if the picker picks it wrong, the packer don't usually pack it wrong.

Q Well, if the --

A If the picker picks it wrong, the packer always gets it, you know he finally realizes the mistakes.

Q Well, not always gets it, he's supposed to always get it?

A He's supposed to always get it.

If he's checking by style, color and pieces, he's supposed to get it.

Q Every time the picker -- excuse me.

Every time the packer has made a mistake, isn't it true that the picker has already made a

mistake?

A. No, not necessarily.

Q. No?

A. No.

Q. Tell me an example of how the packer can put something in, can make a mistake and the picker has done his job right.

A. Sometimes let us assume that the packer is packing a style like 1030; okay. The picker went and picked style 2030. Now, if this packer checks the style, color and pieces, he's supposed to be packing 1030. So 1030 and 2030, you know, are packed altogether, just by looking at the style number he can tell.

Q. But in your example, did the picker make a mistake?

A. As I said, the picker could possibly make a mistake.

Q. In the example you just gave, couldn't a picker make a mistake?

A. Yes, the picker could make a mistake but the packer is supposed to get it.

JUDGE PLAINE: All right.

Please continue with your cross examination, Mr. Blyer.

BY MR. BLYER: JA352

Q Is there also an employee who gives the invoice to the picker?

A. Yes.

Q And how does she make up that invoice or he make up that invoice?

A. Pardon me?

Q How does the individual get the information to put on the invoice?

A. From the order.

Q The order comes in by letter or mail?

A. No.

We have the order on cards.

Q You have the order on a card?

A. Yes.

Q And an employee takes that information and puts it on a bill, on an invoice?

A. Yes, on an invoice.

Q And then they give it to the picker?

A. Yes.

Q So it's possible, too, when a mistake is made that that person who made out the invoice made a mistake?

A. Well, I -- say that again, please.

JUDGE PLAINE: Why don't you read the

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question back, Mr. Reporter.

(Record read.)

A Yes, that could be possible, too.

Q Now, who was the -- what was the name of the individual who is making out the invoices at the end of January when Mr. Arroyo was fired for the second time?

I think it was a female.

A Right.

Q Who was that?

A Pamela Singh.

Q Last name?

A Singh.

Q S - I - N - G - H?

A Yes.

She been doing this work for about five years.

Q For about five years?

A Yes.

Q Now, when was it that you learned Mr. Arroyo was fired for making a mistake?

A Was when I fired him for the first time.

Q No, no, second time.

A After he got fired, then I found out from him the same evening.

Q The same evening?

A. Yes.

Q. And then when did you go to the pickers and asked them about the mistake?

A. After I finally realized the mistake he made when I fired him the first time.

Q. I'm sorry, maybe it's my own fault. I apologize. All I'm talking about now is the second time.

A. The second time he was fired?

A. The second time he was fired, your testimony is from what I understand that the night that he was fired, Carmine Minichino then told you that he had been fired for making a mistake.

A. Right,

That's all he told me.

That's all he told you?

A. That's all.

Q. He didn't tell you what kind of mistake?

A. No.

Q. Now, did you or did you not then speak to the pickers about a mistake?

A. I can't --

MR. PULVERMACHER: Are you referring to the second time?

JUDGE PLAINE: Yes.

MR. BLYER: Yes.

A. Usually when -- JA355

Q. Not usually.

Now, the second time after Carmine Minichino told you only that Mr. Arroyo had made a mistake and had been fired, did you check with the pickers about that mistake?

A. No.

Q. Did you check with Pamela Singh about that mistake?

A. Yes.

It was not made by the invoice.

Q. She made the mistake?

A. No.

The invoice was not wrong.

Q. I don't understand.

MR. PULVERMACHER: The invoice was --

A. The invoice was correct.

Q. So at no time -- however, at no time do you really know what the mistake was, do you?

I mean, was it a color mistake, a style mistake, a number mistake? You don't know what it was?

A. Well, when a mistake happens, I have to check it first with the biller, the biller who invoiced the invoice.

Q. Answer my question.

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You said Carmine Minichino only told you he made a mistake.

A. Right.

Q. And you told me you didn't check out the mistake with the pickers.

A. Right.

Q. But you did at least check out the invoice?

A. The invoice, yes.

Q. All right.

Do you know what the mistake was, the color, the style, the size or the number that you put in the box?

Do you know what the mistake was?

A. The number of pieces was short.

Q. Well, how do you know that?

A. Because I checked it out.

Q. What do you mean you checked it out?

How?

A. Well, when the showroom called me and told me that it was short, when I checked it out I knew Arroyo packed it. It was invoiced correctly.

Q. But the showroom called you up and said it was a mistake, short?

A. Yes.

Q. Well, how do you know that that's true?

A. Well, the showroom called me up.

Q. The showroom called you up?

A. Yes.

Q. So you have to believe them?

A. Well, most of the times I do.

Q. How else -- you don't know; right?

A. Yes.

Q. Let's go back for a second.

How much -- when did the showroom call you to tell you that someone sent an order wrong by sending too few items?

A. Repeat that again.

Q. When did the showroom call you to let you know a mistake was made and the mistake was that they didn't send you -- that they were not sent enough of the right item?

A. As soon as the store called the showroom.

Q. The showroom called you; right?

A. Yes.

Q. When?

A. I can't recall when.

Q. Well, was Mr. Arroyo still working there?

A. Yes.

Q. He was still working there?

A. Yes.

These mistakes happened before firing.

Q What happened before five?

A Before I fired him.

Q You didn't fire him the second time, did you?

A Not on the second time.

Q And the showroom called you?

A Yes.

Q So now you knew what the mistake was that he made?

A Yes.

Q And then you fired him?

A No.

Q No?

A No, I didn't fire him.

Q You told Carmine?

A I didn't tell Carmine, the second time Carmine fired him.

Q Did the showroom call you or call Carmine?

A The showroom doesn't call him, the showroom calls me. But for the second time, I didn't fire him, I only got a -- when I get to know that he was fired was when Carmine fired him, then I got to know that in the evening.

Q But the showroom called you?

A Whenever somebody make a mistake, the showroom always call me first.

Q. And you didn't tell Carmine about that?

A. No, I didn't tell Carmine about it.

Q. But Carmine fired him?

A. For the second time?

Q. Yes.

A. Yes.

Q. And the showroom doesn't call Carmine?

A. No, the showroom doesn't call Carmine.

Q. And Mr. Rossi didn't do anything about it?

A. No.

Q. Was there anything in particular, Mr. Orie, that cause you to fire Mr. Arroyo the first time?

A. Mistakes, I fired him for the same mistakes.

Q. Had you warned him before that?

A. Yes.

Q. And you told him that he was going to be fired?

A. I warned him about his mistakes. I warned him about his not coming in and not calling.

Q. Oh, not coming in and not calling?

A. Whenever he stays out he doesn't call. I warned him several times about that.

Q. What was the reason you let him go, both or one?

A. Well, the mistakes.

Q. The mistakes?

A. Yes.

Q Did you speak to anyone first to get authorization to let him go?

A No.

Q You did it on your own?

A Yes.

Q You didn't like his work, I guess?

A Who? Me?

Q Yes.

You didn't like his work, you thought it was unsatisfactory?

A Yes, you can put it like that.

Q But then Carmine rehired him?

A Yes.

Q Then he checked with you first?

A Not to do the same type of work he was doing.

Q But in the Packing and Shipping Department; right?

A No.

Q Oh.

Well, did he speak to you about rehiring him first?

Did he get your okay?

A He rehired him on hiw own.

Q On his own?

A Yes.

Q Now, isn't it true at the time that he was fired the second time, that he was again doing the work that you claim you fired him for the first time?

A. Repeat that question again, please.

Q When he was fired the second time --

A. Yes.

Q -- isn't it true that he was doing the same type of work that you calim you fired him --

A. No.

Q -- for the first time?

A. No.

Q Wasn't he packing?

A. No.

Q He wasn't packing?

A. No.

For the second time he was doing credits, opening credits.

Q Wait a second now.

On the day that he was fired, didn't you say he made a mistake when he put the wrong amount of goods in a package?

A. That's when I fired him.

Q That's packing; right?

A. Yes.

Q And wasn't he doing that type of work --

A. After he came back?

Q. Wait a minute.

A. After he got rehired?

Q. Wait.

Wasn't he doing that type of work before he was ever let go for the first time, when he began working for you?

A. Before he got fired?

Q. By you the first time.

A. Yes, yes.

Q. All right.

And he was doing that same work --

A. After he got rehired?

Q. -- the day he was fired?

A. Yes.

Q. The second time?

A. No.

Q. I'll try it again.

MR. PULVERMACHER: Because counsel is confused, it doesn't seem the witness is.

MR. BLYER: I wonder if it's just me.

JUDGE PLAINE: No, it isn't. I'm confused, too, because I understood that one of the departments called this witness to let him know what the mistake was and it had to do with the improper

color or style --

MR. BLYER: No.

It had to do with the improper quantity.

JUDGE PLAINE: Quantity, yes.

How could that be anything other than the kind of work he was doing the first time?

MR. PULVERMACHER: Your Honor, I think I do understand the difference, but that may be because of my understanding of the case.

JUDGE PLAINE: I'd like to have the witness explain it.

MR. PULVERMACHER: Could I possibly ask a few questions?

JUDGE PLAINE: No, not yet. You'll get your chance.

MR. BLYER: I'll try one more time if I may, your Honor.

JUDGE PLAINE: Yes.

BY MR. BLYER:

Q You say you fired him the first time.

Is that correct?

A Yes.

Q And what was his job at that time?

A Packing.

Q All right.

And when he was fired the second time, supposedly by Carmine --

A. Right.

Q. -- what was he doing that day?

A. He was -- he was opening credits.

Q. Wasn't he packing?

A. No.

Q. When the showroom called you and told you he made a mistake, what job was he doing?

A. He was doing the packing.

Q. Thank you.

MR. PULVERMACHER: May I ask that that be clarified as to the time when?

MR. BLYER: You'll have your opportunity.

MR. PULVERMACHER: No, no.

You asked a question that's confusing and can relate to the two situations which you want to have straightened out. I think the time should be established.

MR. BLYER: I think I did.

MR. PULVERMACHER: No.

The question was an open question.

MR. BLYER: Your Honor, if you feel that I --

JUDGE PLAINE: All right.

Let's nail this down.

This second call, this came on the day he was fired the second time; is that right?

THE WITNESS: Pardon me?

JUDGE PLAINE: Did this call from the other department telling you that there was an error come in January, the second time he was fired?

THE WITNESS: No.

That was the first time.

JUDGE PLAINE: The first time?

THE WITNESS: Yes.

Then I fired him.

JUDGE PLAINE: Then what was it you learned the second time?

THE WITNESS: I didn't fire him the second time.

JUDGE PLAINE: I know you didn't fire him the second time. You learned about it, didn't you?

THE WITNESS: After he was fired, I was told that he was fired. That's the evening I learned he was fired.

JUDGE PLAINE: Yes.

But you also learned from someone what the error was, didn't you?

THE WITNESS: I don't know what the error

was for the second time, all I know what was the error for the first time, the reason for the first time he was fired. I know why I fired him for the first time only.

The second time, I know he was fired after he got fired.

JUDGE PLAINE: You learned about it that day or that night?

THE WITNESS: That evening.

JUDGE PLAINE: That evening?

THE WITNESS: Yes.

BY MR. BLYER:

Q From whom?

A. From Carmine.

Q. Did he tell you why?

A. No, hd didn't tell me why.

Q. Did you ask him why?

A. All he said, "Eddie Arroyo is finished."

That's all.

Q. And then you made no check of the -- you didn't -- talk to the pickers?

A. No.

Q. You said you spoke to Pamela Singh?

A. That was for the mistake that he made the first time.

Q Oh, Pamela Singh -- you checked with Pamela the first time?

A Right.

Q How about the second time?

A I didn't check with Pamela because --

Q All right, just didn't check.

I don't know why.

You didn't check?

A No.

Q And you didn't check with the pickers?

A No.

Q Did you check with any of the other packers?

A No.

Q Wasn't he working that day very closely with Mr. Vargas?

A The second time he was fired?

Q Yes.

A No.

Q You don't remember him working with Mr. Vargas?

A Not the second time he was fired.

Q All right.

Now, the second time he was fired, on that day he was packing?

A No.

Q He was not packing?

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A. He was doing the credits.

Q. Doing the credits?

JUDGE PLAINE: Was he working in your department that day?

THE WITNESS: Well, we consider that --

JUDGE PLAINE: As part of your department?

THE WITNESS: Yes, part of my department.

JUDGE PLAINE: So you were aware of what he was doing?

THE WITNESS: Yes.

BY MR. BLYER:

Q Now, so he must have made a mistake in doing credits?

A. Well, I don't know why he get fired the second time for.

Q. Well, you say he was doing credits, though?

A Yes, he was opening credits.

JUDGE PLAINE: What does that mean?

THE WITNESS: When all the returns come back, you have to write out credits for them. He was opening the boxes.

JUDGE PLAINE: Just opening boxes?

THE WITNESS: Yes.

That's when he got rehired.

JUDGE PLAINE: And on the day he was fired he was still opening boxes?

THE WITNESS: Yes, for the second time.

JUDGE PLAINE: I understand.

BY MR. BLYER:

Q What was he doing in opening the boxes?

A Just opening the boxes. I had him working with somebody, I had him working with a girl. She was doing the credits and he was opening the boxes.

Q He would open the box, take whatever out of the box and give it to the girl?

A Right, right.

That's all.

Q Can you think of anything he could have done wrong?

A The second time?

Q Yes.

A No.

Q In that job, I mean what does it involve, just opening the box and taking the stuff out of the box?

A I don't know why he got fired the second time. All I know is I fired him for the first time and I know why.

Q You know why the first time?

A. Yes.

MR. BLYER: I think that's it for me.

Thank you, your Honor.

JUDGE PLAINE: All right.

MR. PULVERMACHER: Redirect, your Honor?

JUDGE PLAINE: Yes.

REDIRECT-EXAMINATION

BY MR. PULVERMACHER:

Q. When he was first working for you before the first discharge and he would pack something, how long after the package was made up would the error be discovered and who would discover it?

A. Maybe in a weekly time, a week or two weeks.

Q. So that the error would be discovered at the --

A. Right.

Q. -- place where the package was sent to?

A. Right.

And if it's short, then they would call the showroom. Then the showroom would call me. Then the mistake would be discovere.d

Q. So that at that point there was no way of telling who was even picking that the day the error took place?

A. Who was picking it?

Q Yes.

A No.

But I could tell who was packing it.

Q That's because the initials on the invoice, on the so-called copy number two?

A That's right.

Q How many times a day do you speak to the showroom?

A Oh, 30, 40 times.

Q Do they call you or do you call them?

A They call me.

Q This is the routine part of your job?

A Yes, yes.

Q And do they, in these 30 or 40 phone conversations, call up only about errors?

A Well -- no. Several things.

Q Is errors the major number of calls that you get from the showroom?

A No, not really.

Q But when you get an error, you attempt to check which packer packed it?

A Yes.

Every error they called me up on, I always check it who packs it.

Q Do you also routinely check the invoicing?

A I check the order against the invoice. Then I

take the invoice against the order -- the order against the invoice inside the office. It's there where I would find out who packs it.

Q. Did you find any errors which were initialed Arroyo where there was an error in the making up of the invoice?

A. Repeat that, please.

Q. Did you find that this Pamela Singh had made any errors in making up the invoice from the order?

A. No.

MR. BLYER: Are we talking about the first time?

THE WITNESS: Yes, the first time.

BY MR. PULVERMACHER:

Q. He never did any packing after the first time you fired him; right?

A. Right.

Q. And while the Credit Department is under your jurisdiction, you don't supervise it directly; is that what you're saying?

A. Right.

Q. Did you hire Eddie Arroyo the first time?

A. Yes.

Q. What did he tell you when you first hired him?

A. He just came in asking for a job. I asked him

if he had any experience and so forth.

He said yes, he did packing before. I can't recall what he told me he was packing. I gave him the job.

Q And what money did you pay him?

A I started him off at two-sixty. I give him three dollars after a couple of months.

Q Did you give Arroyo any cards for the union?

A Yes.

Q Whom did you get the cards from?

A I got the cards from Rita, the shop steward.

Q Did you get them from either Mr. Yagoda --

A No.

Q -- or Mr. Rossi?

A No.

MR. PULVERMACHER: No further questions.

RECROSS-EXAMINATION

BY MR. BLYER:

Q Just for clarification, when you talk about the showroom, is that at 1411 Broadway, Melange?

A Yes.

Q So if I understand you correctly you learn about errors a week or two later because the purchaser, the customer, the store --

A Calls up the showroom.

Q -- calls up Melange and says, look, you sent me the wrong thing or too many or too little -- they never call up when they have too many, I suppose -- and then they call you?

A. Right.

Q. Okay.

Now, with regard to your pickers, at the end of January how many were there?

A. I had three.

Q. Three?

A. Yes.

Q. And who were they?

A. Pooran Chan Persad.

Q. Who were the other two pickers?

Start off with the easy one.

A. Louis Martinez.

Q. Who was the other one?

It's the end of January; correct?

A. Yes.

Q. And your last one was -- why don't we just do his last name.

That Mr. Heerapersaud?

A. Mr. Who?

Q. Is it this gentleman's sister?

A. Yes.

Q That's Miss Hoorapersaud.

Now, the pickers don't put their names on what they do.

A Yes.

Q They do?

A Yes.

Q So why is it so difficult to find out what picker made the mistake?

A I didn't say the picker made the mistake.

Q If a picker makes a mistake, why is it hard to find out what he did, that he did it?

A Well, when the picker picks the order, puts it on the table, and puts his initial on a piece of paper right on the order.

Q And is that the same piece of paper that the packer write his initial on?

A No.

Q What happens to the paper that the picker puts his name on?

A When that picker finishes picking that order, he took that order to be invoiced. When that order is finished invoicing, it comes back to the packer. The packer takes it and puts it on the order, picks up the order and starts to check it. He packs it from the invoice, he packs the order from the invoice.

Q And where does he put his initials?

A Right on the number two copy, he got a space there to put his initial, packed by so-and-so.

Q And where are the initials of the picker?

A It would be right on the paper.

Q The same number two copy?

A Right.

If there is a mistake right there and then, the picker would have to correct it because the initial is right on the paper, the slip of paper that's with the garments.

Q It's the same sheet of paper?

A No, it's not the same sheet. I will say it again.

Q Please.

A When the picker picks the order, he puts it on the table. They put a little piece of paper with the initial on it. Then the picker takes the order, gives it to the biller. When the biller bills it, the biller brings it and gives it to the packer. The packer is supposed to take the invoice and check it against the order by how picked it, you know, if so-and-so picked it, he will check it against the order. If there is a mistake right there and then, the packer is supposed to tell -- if John picks the order, they

are supposed to say it, the mistake.

JUDGE PLAINE: What becomes of that little piece of paper?

THE WITNESS: If the packer don't find any mistakes right there and then, then the picker didn't make any mistakes.

Q That doesn't answer the judge's question.

JUDGE PLAINE: That doesn't answer the question.

The question is:

What becomes of the piece of paper that the picker writes out on which he puts his or her initials?

THE WITNESS: Well, after the order is packed, the paper is just --

JUDGE PLAINE: Discarded, thrown away?

THE WITNESS: Yes.

I just made them put their initials on it to see who makes the mistake.

JUDGE PLAINE: Well, wouldn't the person who makes the invoice out, note the name of the picker on it?

THE WITNESS: As soon as I get a mistake, I take back the order, it goes back to the billing machine, checks out the order towards the invoice and

then brings it back. That's the first thing that I do, check it out against the order itself.

JUDGE PLAINE: But that's only assuming you catch the mistake right away; isn't that right?

THE WITNESS: If the picker picks it wrong, I got to check it out against the biller. If the biller bills it wrong, they would have, you know, wrong style or something like that.

JUDGE PLAINE: But what you're telling me is that you have -- you leave yourself completely unguarded about mistakes that are not caught right away. If a mistake isn't caught right away, you have no way of knowing whether the picker made the mistake because you say you throw away the piece of paper.

THE WITNESS: The piece of paper after the order is finished packed --

JUDGE PLAINE: Well, why don't you -- I may be arguing with you, but why does it happen that you don't have your invoice biller put the name or the initials of the picker right on the invoice?

Why is that system not used to help you catch mistakes or to correct mistakes?

If I understand you correctly, you're saying that the only time you can catch a mistake is if your packer catches it.

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Right?

THE WITNESS: Yes.

JUDGE PLAINE: That's the only mistake you can catch.

So that if he's not alert, if he's careless, then a lot of mistakes are going to happen and you're not going to know whether someone else is also contributing to this.

THE WITNESS: That's why they have to be packed by style, color and sizes. Let us assume a style like 1030 black, they can't pack 2030 black. They got an invoice there reading 1030 black, they have to pack 1030 black, they can't pack 2030 black.

JUDGE PLAINE: So you never have any way of knowing where the mistake originates?

THE WITNESS: I find the mistakes.

JUDGE PLAINE: Oh, you find the mistakes?

THE WITNESS: Sometimes they have extra stuff on the table. Whenever they have extra stuff on the table, I take out the invoice, compare it with the order and on the order there is on style left out to bill. I got to make another invoice out for it. So I catch up with all of the mistakes. I catch up with 90% of the mistakes.

MR. BLYER: I'm going to move on to one

more subject and then I'll be done, I think, with this witness, your Honor.

JUDGE PLAINE: Very well.

BY MR. BLYER:

Q When Mr. Arroyo -- the records show that Mr. Arroyo received a raise to three dollars.

A Right.

Q The week ending January 18th. That was after he came back, after you fired him, supposedly.

A Yes.

Q And you're the one, you said on testimony, that you gave him a raise.

Right?

A Yes.

Q Look at me.

A Yes, yes. ..

Q Did he ask you for the raise?

A He been complaining about it. Now, if I know a guy is --

Q No, no.

Just answer my question.

He asked you for the raise?

A Yes.

Q Not Carmine?

A Both of us know about the raise. When he told me

about the raise --

Q And you approved the raise?

A I usually speaks to him first before I --

Q Did you approve it?

A I didn't approve it without his consent.

Q Well, did you say to him, let's give him a raise?

A Yes.

MR. BLYER: Okay.

I have nothing further.

MR. PULVERMACHER: One moment, please, your Honor.

REDIRECT-EXAMINATION (CONTINUED)

BY MR. PULVERMACHER:

Q Is it the policy of Melange to place the ultimate responsibility for checking the order on the packer?

A Pardon me?

Q Is it the policy of Melange that the ultimate responsibility of what goes into the package in comparison to the invoice, that it's the packer who is responsible?

A The packer is responsible for --

MR. BLYER: Objection, your Honor, on the grounds that no foundation has been laid. I don't

understand that there's any policy.

I think he should be, without being led, asked the question, is there any policy with regard to ultimate responsibility?

JUDGE PLAINE: Let's start there, because we've got a really confused pie here.

BY MR. PULVERMACHER:

Q Well, whose responsibility is it to see that packing is done properly?

A The packer.

Q And when the picker's identified for having picked the package is destroyed, it is because the packer, in effect, says that it's been picked correctly?

A Correctly.

Q Is the packer not in fact the third check in the system of cross-checks that Melange uses in shipping?

A Pardon me?

Q Isn't the third check in the system of checking the packaging of the goods?

A Yes.

MR. PULVERMACHER: That's all.

RECROSS-EXAMINATION

BY MR. BLYER:

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Q What are the first two?

A Pardon me?

Q What are the first two checks?

A Two what?

Q Checks.

Do you have any idea what I'm talking about?

A You want to repeat that question again.

Q You said that the packers were the third check that Melange uses in checking the goods.

What are the first two checks?

A What third check are you talking about?

Q Yes.

I don't know; I don't know.

MR. PULVERMACHER: Well, we have the invoice --

MR. BLYER: Objection, your Honor.

JUDGE PLAINE: He's still on his cross.

MR. BLYER: I'm questioning now.

MR. PULVERMACHER: All right.

BY MR. BLYER:

Q The people who -- the individual that does the billing --

A That's right, the packer is the third check. I know what you're trying to say.

Q How you understand?

A. Yes.

Q. The picker picks the order from the card?

A. Right.

Q. Then gives the goods to a biller?

A. Right.

Q. Is that correct?

A. Right.

Q. Who doesn't check the accuracies of what the pickers picked, does he?

A. Well, when the picker picks the order, they circles the styles and the colors. That is exactly what the biller is supposed to bill.

Q. Yes, but does the biller check and see that that's what's picked?

A. Well, the biller bills exactly what is circled.

Q. I'm not asking you that.

Does the biller check what the picker picked?

A. No.

The packer is supposed to check what the picker picked.

Q. So who before the packer is checking the picker's work?

A. It only the picker and the packer.

Q. Does the picker check his own work?

A. Yes.

Q Well -- all right.

A If you put it like that, yes.

Q So why do you say it's a third check -- I don't even want to know that.

MR. BLYER: That's all I have, your Honor.

REDIRECT-EXAMINATION

BY MR. PULVERMACHER:

Q The paper work involved in the system is the original order; is that correct?

A Right.

Q The invoice that's made up from the original; is that correct?

A Right.

Q The work that the picker performed by circling the invoice?

A Right.

Q And the packer's check of the invoice?

A Right.

MR. PULVERMACHER: No further questions.

MR. BLYER: I have nothing further, your Honor.

JUDGE PLAINE: All right.

Thank you, sir.

You are excused.

(Witness excused.)

MR. PULVERMACHER: May I recall Milton.

JUDGE PLAINE: Sit down, please. You've been sworn in already. You are still under oath.

THE WITNESS: Yes.

(Milton Heerapersaud, recalled.)

DIRECT-EXAMINATION

BY MR. PULVERMACHER:

Q Mr. Heerapersaud, for the convenience at this point in the record, this witness has been referred to previously by his nickname of Milton.

Milton, would you tell us what you know about Arroyo's activities before he was fired in December -- before his termination in December 1974?

What was he doing and how was he doing it?

MR. BLYER: Objection, your Honor.

It has not been established that this witness is in a position to know.

MR. PULVERMACHER: I think he testified for you on that point. I'll go into it, anyway.

BY MR. PULVERMACHER:

Q What were you doing in December 1974?

What job were you performing?

A I do the invoice work.

Q You do the invoice work?

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A. Right.

I write it up in the book.

Q. And was Arroyo involved with the work that you were doing?

A. Well, he have to pack the order before I get the invoice.

Q. So he finished with his job before you started your job?

A. He finished, right.

Q. And it was only after he had finished his job that you -- what did you do after he finished his job?

A. After he finished his job?

Q. Yes.

A. I take the invoice, I write it up if it's UPS, I write it in the UPS book. If it's freight, you write it in the freight book. I write it. I keep the invoice. The next day the invoice goes to the office.

Q. Were you familiar with what Arroyo was doing in December of 1974?

A. Well, his job is to pack.

Q. Now, in January was his job to pack after he came back for the two and a half weeks?

Was he still packing?

A. In January?

Q In January, yes, if you remember.

A I don't remember.

Q All right.

Was he doing his job properly in December?

MR. BLYER: Objection, your Honor.

I don't think counsel has established the grounds for this witness to know.

MR. PULVERMACHER: He's the man who is doing the work immediately following Arroyo.

JUDGE PLAINE: Was he there observing his work?

BY MR. PULVERMACHER:

Q Were you there observing Mr. Arroyo's work?

A No.

Q Did you know if he did his work well or badly?

MR. BLYER: Objection, your Honor.

JUDGE PLAINE: I can't allow that, counsel. He didn't observe it.

MR. PULVERMACHER: I think we have a language problem with this young man, your Honor.

JUDGE PLAINE: Well, if you think so, press it, counsel.

BY MR. PULVERMACHER:

Q How far did you work from Arroyo's desk?

A How far did I work?

Q Yes.

A From --

Q As far as from you and I?

A A little bit more far, but from here to where Peter is sitting.

MR. BLYER: What did he say?

MR. PULVERMACHER: He said from the distance to himself to where Mr. Rossi is sitting, which is approximately 15 feet.

Do you agree with that?

MR. BLYER: All right.

BY MR. PULVERMACHER:

Q Did you have an opportunity to see what he was doing at all times, at most of the times that you were working?

A Well, when I go and pick up my invoice, I see him pack. When I go close to him he's packing. When I sit down at my desk where my work is, he's packing. I don't check his work when he packs.

Q Did he seal the package after he was finished with it?

A Yes, he sealed the package.

Q And he would -- and you would then pick up the invoice from him?

A He would seal the package, put the weight on

the invoice and then put it what truck it has to go on, the different trucks, put it on it the truck it has to go. There was a basket over there where he puts the invoice. Then I go and pick up the invoice from the basket and write up the invoice.

Q You have a clear view from where you were working to see what he was doing?

A I --

MR. BLYER: Your Honor, I don't see the purpose in pursuing this.

The man has already said he doesn't check the man doing the work, when he gets the box that it's sealed, and there is no evidence that he rechecks the work. I don't see the line of questioning being fruitful at all.

JUDGE PLAINE: He's also indicated he doesn't observe his work.

MR. PULVERMACHER: All right.

BY MR. PULVERMACHER:

Q Let me go in more directly:

Did you overhear the conversation between Norris Orie and Arroyo?

MR. BLYER: Objection, your Honor.

What conversation are we talking about?

MR. PULVERMACHER: In December when he was

being discharged.

A Yes, I overheard that.

Q Would you tell us that conversation?

MR. PULVERMACHER: I was trying to establish that this witness had access, heard and was in a position to report on that.

A Norris Orie got a call from the showroom.

MR. BLYER: Objection, your Honor.

That's not responsive to the question.

JUDGE PLAINE: Tell us what happened at the discharge.

THE WITNESS: Well, the discharge, Norris Orie was telling Eddie Arroyo that he made mistakes, a lot of mistakes and he can't tolerate it anymore. So he fired him.

MR. BLYER: Objection, your Honor, to the last part of the answer.

That is not responsive to the question.

He was asked to tell what he said. That was a conclusion, so he fired him.

I would like him to tell, if anything, the words that were used.

BY MR. PULVERMACHER:

Q Do you remember the words that Norris said to Eddie?

A I remember the words.

Q Did he say fire?

Did he use that word "fire" or some word like that?

A I couldn't remember exactly what he said.

Q Was the meaning of it that he would be fired?

A It could be a meaning that he was fired.

Q Have you heard Norris warn the packers previously about mistakes?

A Yes.

Q Fairly frequently?

A Yes.

Q And did he also tell the pickers to be careful and warn them?

A Right.

Q Now, do you know what Arroyo was doing when he came back in January?

MR. BLYER: It's repetitive, your Honor.

He answered that question.

He said he didn't know.

MR. PULVERMACHER: Well, let me ask it just to be done with it.

BY MR. PULVERMACHER:

Q Do you know what he was doing when he came back after he was fired the first time and rehired?

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A I couldn't remember.

Q Was he doing the same thing he had been doing before he was fired?

MR. BLYER: Your Honor, he just said he couldn't remember.

JUDGE PLAINE: He said he can't remember.

MR. PULVERMACHER: I'm trying to identify it a different way.

BY MR. PULVERMACHER:

Q Was he still packing In January?

A I will say that when he came back, right, he didn't come back to pack, he do another job, working credit boxes, opening credit boxes.

MR. BLYER: Now he remembers.

A That's the second time.

Q Was that visible from the area from which you worked in, what he was doing after coming back from being fired the first time?

A Where I sit to where he work?

Q Yes.

A It was far away.

Q You couldn't see him?

A No.

Q So you didn't know what he was doing the second time?

A No.

MR. PULVERMACHER: Your witness,

CROSS-EXAMINATION

BY MR. BLYER:

Q I want you to tell me word for word what you remember when Norris Orie was speaking to Mr. Arroyo when you say in around December.

What was he saying to him, word for word, as best you can remember?

Do you remember what he said?

A I couldn't remember exactly what he said.

Q Well, what do you remember, as close as possible to the words?

A He made a lot of mistakes.

Q Anything else?

A He made a lot of mistakes.

Q That he was making a lot of mistakes?

A Yes.

Q Anything else?

A No.

MR. BLYER: That's all I have, your Honor.

JUDGE PLAINE: All right.

MR. PULVERMACHER: No further redirect, your Honor.

JUDGE PLAINE: Thank you, Mr. Heerapersaud.

(Witness excused.)

MR. BLYER: May I have five minutes, your Honor?

JUDGE PLAINE: Yes.

We will be in recess for five minutes.

(Recess taken.)

JUDGE PLAINE: Back on the record.

MR. PULVERMACHER: I call Mr. Minichino.

Whereupon, CARMINE MINICHINO, was called as a witness and having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT-EXAMINATION

BY MR. PULVERMACHER:

Q Please state your name and address for the record.

A Carmine Minichino, 3063 Cropsey Avenue, Brooklyn, New York.

Q Mr. Minichino, by whom are you employed and in what capacity?

A I'm employed by Melange Sportswear. I'm the Office Manager, General Manager.

Q And you're referring to the office at the Bush Terminal Building?

A. Yes, I am in Brooklyn.

Q. Now, did there come a time when someone came to you and asked you to give Arroyo a job?

A. Yes.

Q. When was that?

A. I can't be sure of the date, but this was after he had been discharged by Norris Orie.

Q. Did you know why he'd been discharged by Norris Orie?

A. Yes, I did.

Q. And you heard Mr. Orie's testimony?

A. Yes, I did.

Q. Is that what he had told you at the time?

A. Yes.

Q. Now, when he came back to you for a job, why did you rehire him?

A. Well, I sort of felt sorry, it was Christmas, and I sort of felt sorry -- it was right after the holidays -- that he was discharged. And since we had been shipping since that previous September, I had a job that was opening up that I thought Mr. Arroyo would be able to handle. It did not involve the picking and packing which can be complicated. It was simply that I wanted him to open returns and to issue the credit memos that we knew what we had taken back

from our customers.

Q Now, after he was rehired, did he perform or function in the shipping and receiving area?

A He was in that area, but he did not perform that work.

Q Now, Milton testified that he was in a different area or more than 15 feet away from Milton's desk when he came back.

Would you tell us and describe and locate the area that he worked in in January?

A Well, referring to Milton's desk, Milton's desk at that time was towards the front by the elevators.

Nelson Arroyo worked more towards the middle of the floor. I would have to say from Milton's desk, he was 25 or 30 feet further in.

Q And he wasn't in the packing -- in Milton's area in January?

A No, he was not.

Q Now, Mr. Minichino, was he -- prior to the time he was fired for the second time, had you had any conversations with Mr. Rossi relative to Arroyo?

A No.

Q When you fired him for the second time, Mr. Minichino, did you consult Mr. Rossi?

A No, I did not.

Q Did you consult Mr. Yagoda?

A No, I did not.

Q Is Mr. Yagoda your boss?

A No, he's not.

Q Is Mr. Yagoda Arroyo's boss?

A Arroyo's boss?

Q Yes.

A No, he's not.

Q As far as you're concerned, Mr. Yagoda has nothing to do with Arroyo?

MR. BLYER: Objection, your Honor.

A No.

MR. PULVERMACHER: Well, I'll withdraw it.

JUDGE PLAINE: Hold on now.

What's the question pending?

MR. PULVERMACHER: As far as he -- the question was, your Honor, as far as he was concerned, did Yagoda have anything to do with Arroyo.

JUDGE PLAINE: Is there an objection to that?

MR. BLYER: Yes.

JUDGE PLAINE: What's the objection?

MR. BLYER: It calls for a conclusion.

JUDGE PLAINE: All right.

I'll sustain the objection.

JA399

BY MR. PULVERMACHER:

Q You're a Melange employee?

A Yes.

Q Arroyo is a Melange employee?

A Correct.

Q Mr. Stoll is not a Melange employee?

A Mr. Stoll?

Q Mr. Yagoda.

A He's not a Melange employee, correct.

Q Now, as I understand it, the Shipping and Receiving Department receives from other contractors at the Bush Terminal.

A Yes, we do.

Q And you ship -- all shipments go out of Bush Terminal to the ultimate purchasers?

A Yes, it does.

Q What's the price if a picker and a packer mispack a package going to the purchaser, would you tell us?

A Untold.

Number one, if they over pick and there's too much in the carton, more than what's billed, it's a total loss.

If they underpick or if they pick the wrong style, the stores generally complain. They want what they

ordered and how they ordered it. It creates tremendous ill will for our company. And being a new company, it's a terrible thing for us.

Q The company just started about the time you were employed?

A Yes.

Q All right.

Now, would you tell us about a physical altercation Mr. Arroyo got into, if you know about it?

MR. BLYER: I'll object to that, your Honor, as being irrelevant.

I didn't know he was fired for a physical altercation.

MR. PULVERMACHER: No, no.

It leads up to the --

MR. BLYER: I don't think it's relevant.

MR. PULVERMACHER: Let me withdraw it and back into it another way.

JUDGE PLAINE: All right.

BY MR. PULVERMACHER:

Q Now, after you rehired Mr. Arroyo, would you tell us what he was doing and how he was doing it and if there were any problems?

A After I hired Mr. Arroyo the second time, he was

under my instruction because this was a new area that we had just opened up as far as handling the returns of merchandise from our customers. And he was to open the cartons and to check to see that the merchandise corresponded with the debit memos or the piece of paper, the packing slip, that the customer sent us.

He was further instructed to examine these garments, determine the damage and to place them in various boxes, depending on the damage, whether it be a split seam or a hole.

Up until the time I had to discharge him, he was performing reasonably satisfactory.

Q Were there any incidents along the way which caused or were in the background of his discharge?

A Well, the second time I had to discharge him, the primary reason I discharged him was apparently his inability to come in everyday and to call me when he wasn't coming in. Somewhere, I don't know the exact date, there was a fight. I was in my office, and there was a tremendous commotion, people were screaming, girls were running. I had to run out into the warehouse and physically break up Eddie Arroyo and a Juan -- I'm sorry, I don't remember Juan's last name. They were engaged in a fight. I separated

them. One of the fellows helped me. I then tended to Mr. Arroyo's wounds; he was the loser in the [illegible]. He had quite a number of scratches on his face, bleeding, what-have-you.

Q Now, on the day -- strike that.

When did you discharge Mr. Arroyo?

Did you face him and say that you are fired, or words to that effect?

A Well -- no, I didn't face him.

It's been my experience, I don't like to discharge people on the telephone. I think that's not the way to handle the situation.

Mr. Arroyo did not come in one day. I couldn't swear to the day, but I believe it was a Tuesday or a Wednesday or a Thursday. It was midweek.

Before I hired him, I told him about this. Now, when I brought him back, he was the only one doing this job, this new credit job. I told him, you know, if you can't come in -- I mean we all get sick -- if you can't come in, call me, it's important, I must know so I can have someone at least fill in.

He doesn't show up. I don't get a telephone call until two o'clock or 2:30 in the afternoon. It seems he was stuck with his car on one of the parkways leading from the airport.

I was a little annoyed and I told him that before he started work the next day, he was to speak to me.

I had in my mind to discharge him at that time.

I took his timecard out of the tray, out of the rack on the wall and it was on my desk.

I believe I was late coming in the next day, and I passed Mr. Arroyo in the elevator. He then -- I think he called me up or something. I'm a little vague on this.

I told him in one of our conversations, or he came back. I don't recall exactly.

Q Now, if I show you his timecard, would that help you to identify the day of the week on which this phone call at about two in the afternoon occurred?

A It would be the very next day on his card when he did not punch in.

Q Let the record show that I am showing the witness General Counsel's Exhibit --

MR. BLYER: It's your exhibit.

MR. PULVERMACHER: I believe it's four, your Honor.

JUDGE PLAINE: No.

MR. BLYER: It's his exhibit.

JUDGE PLAINE: It's R4.

BY MR. PULVERMACHER:

Q -- Respondent's Exhibit 4, for the week ending February one, 1975.

(Handing.)

MR. BLYER: May I have one second to locate my copy which I --

MR. PULVERMACHER: I grabbed yours.

MR. BLYER: I thought you did.

JUDGE PLAINE: Where are the originals?

MR. PULVERMACHER: Here are the originals.

MR. BLYER: I'll use the originals. You can hold that.

MR. PULVERMACHER: Here.

(Handing.)

JUDGE PLAINE: Is there a pending question, counsel?

MR. PULVERMACHER: Would the Reporter read back the pending question?

(Record read.)

JUDGE PLAINE: That's the question.

THE WITNESS: Okay.

A This is the day.

Q It would be the third day of the work week?

A It would have to be because the card shows blank, it was not punched in that morning so apparently

it wasn't in.

Q While we're referring to it --

JUDGE PLAINE: Hold on just a minute.

You say the third day of the week or the third -- you notice at the bottom of your form, you have first day, second day, third day and so on.

Is that what you're referring to?

THE WITNESS: Well, the first day -- on our clock at Melange, in order to simplify everything, we run the time clock like a calendar.

JUDGE PLAINE: Yes.

THE WITNESS: The first day being Sunday.

JUDGE PLAINE: Right.

THE WITNESS: So it runs one through seven.

Actually, since we never work on Sunday, we call it the third day, Wednesday is the third day. But really on the clock Wednesday would be the fourth day, Sunday being the first. But we never worked Sunday.

JUDGE PLAINE: And there's no clock in on that fourth calendar today?

THE WITNESS: Right.

JUDGE PLAINE: On third work day,

whichever you call it?

THE WITNESS: Right.

JUDGE PLAINE: And that's the day you're now talking about?

THE WITNESS: Right, that's the day in question, that Wednesday.

JUDGE PLAINE: All right.

MR. PULVERMACHER: And for the record, I'd like to establish that the Wednesday in the week ending February 1st, would have been January 29th.

JUDGE PLAINE: All right.

MR. PULVERMACHER: Let the record indicate that the Court took notice of such fact.

JUDGE PLAINE: Yes.

BY MR. PULVERMACHER:

Q So that on Wednesday, you told Arroyo to see you before he started working on Thursday; is that correct?

A Yes.

I received a call Wednesday afternoon. I told him before he was to start work the next day, he was to see me.

Q And then he -- what did you do after this phone conversation?

A I removed his punch card, his timecard, from

the tray or the rack, assuring myself that he could not begin work until he spoke to me, simply because he would have no card to punch in with.

Q And when you rehired him, did you agree to give him three dollars an hour as opposed to what he had been earning previously?

A When he originally came to us, we started him with the lower salary, as we do most of our people. When they get the experience, we then bring them up to the three dollars.

I brought him back. He told me that he wasn't making enough money, he needed money. And in my mind I had a new job opening, this credit job. And in that job I could have -- I went for the additional salary because I figured the person doing that job, it was budgeted for, I wasn't over any budget. So I did it. Right or wrong, I did it.

Q But you gave him the raise when he came back the second time.

A Right.

Q And it wasn't during the time he was working as a packer?

A I'd have to --

Q Incidentally, did you discuss the --

MR. BLYER: Wait.

There's a question pending.

MR. PULVERMACHER: The witness was having difficulty in answering.

A Well, without looking at the records, I really and truly couldn't answer that. But I'm sure it was the second time.

MR. LLYER: Then how can you be sure?

MR. PULVERMACHER: May I remind the Court at this point that we did enter into a stipulation that the raise was given during the week of January 18th -- the week ending January 18th.

JUDGE PLAINE: We have that stipulation, but we also now have contrary testimony from the witness.

MR. PULVERMACHER: No, no, that's the week he came back to work, in that week.

JUDGE PLAINE: I understand that.

But we have contrary testimony from a previous witness seems to reflect some doubt in my mind on that.

MR. PULVERMACHER: There was a little doubt by the witness Orie.

BY MR. PULVERMACHER:

Q Did you discuss with Orie giving him a raise?

A I'm sorry?

Q Did you discuss with Norris Orie, giving Arroyo a raise?

A This is the second time or during the --

Q Yes, at any point.

A I believe at that point Eddie Arroyo had mentioned it to Norris first.

MR. BLYER: That's not responsive to the question.

I object, your Honor.

JUDGE PLAINE: I'll strike that now.

MR. PULVERMACHER: All right.

BY MR. PULVERMACHER:

Q Did you discuss with Norris Orie, giving a raise to Arroyo or perhaps did Orie discuss with you the giving of a raise?

A Norris mentioned to me that Arroyo had spoken to him about it, but I don't have to discuss my decisions with Norris Orie.

Q So there was some conversation with Orie?

A There was conversation, yes. But the decision --

Q The decision for the raise was whose?

A I can make my own decisions without discussing it with Norris.

Q Now, did you see Eddie Arroyo on the Thursday when he came to punch in?

A I was late coming in that Thursday. Apparently -- well, Eddie Arroyo had come in, I assume his correct time. I was late coming in.

He passed me in the elevator as I was coming up and he was going out and passed me. There was no conversation.

Q What time of the day was that?

A About 9:30, maybe ten o'clock.

Q Now, when Eddie was fired by Norris in December, did you tell him to call you up after that, to call up everyday?

A The first firing?

Q Yes.

A No, sir.

Q Had you spoken to Eddie Arroyo on the telephone at all between the first firing and the time he came back to work in the week ending January 18th?

A I spoke to him. He called about a paycheck. You see, when he was fired the first time, there was a check due him for sometime that he had worked. And being fired, I would assume he was concerned about the check. He called me, and I assured him that he would be paid for the time that he was there. I did have a conversation with him, yes.

Q The conversation was only about a paycheck or

was it -- or did it include anything else, if you recall?

A I don't really recall. I know it was about the paycheck.

Q Did Arroyo understand or did he speak to you in his conversation with you that he knew he was fired the first time?

A I --

MR. BLYER: Objection, your Honor. Are we talking about the phone call?

MR. PULVERMACHER: No. At any point.

JUDGE PLAINE: That's more general, I guess.

MR. BLYER: Oh, at any time?

JUDGE PLAINE: You mean you're asking did he think that Arroyo was aware that he was fired?

MR. PULVERMACHER: Yes.

A That's difficult to answer.

Norris fired him and Norris was his superior. Whether or not he understood --

Q No.

Did he express to you that he understood?

A When he came back the second time --

Q Yes.

A -- and had asked me for a job, he had -- he spoke to me about, well, Norris firing him. And I said that Norris fired you and you were fired. He was apparently questioning me whether or not Norris had the ability to fire him. And he did. He was his immediate supervisor.

Q You mean he was, in effect, questioning Norris' authority to fire him?

A Questioning Norris' authority with me about the first firing.

Q Do you know if Arroyo applied for unemployment insurance after the first firing?

MR. BLYER: Objection, your Honor, to the relevance of that, whether he applied for unemployment or not.

BY MR. PULVERMACHER:

Q Well, you're in charge of the unemployment records of Melange, aren't you?

MR. BLYER: Objection, your Honor.

It's irrelevant.

JUDGE PLAINE: What is the relevancy of this?

MR. PULVERMACHER: He had to state a reason. I want to know if this witness knows if Arroyo stated a reason on any application he filed for

unemployment.

JUDGE PLAINE: Do you have any such forms available that we could use instead of guessing?

MR. PULVERMACHER: Well, I want to know if this witness knows of his own knowledge.

MR. BLYER: I would object, your Honor, the best evidence rule.

JUDGE PLAINE: You need the records for something like this. This is a record which is supplied to every employer. There is no point in guessing about it.

BY MR. PULVERMACHER:

Q Do you have a form that Arroyo would have filed in late December or early January relative to his first firing, in your office?

MR. BLYER: Objection, your Honor.

What do you mean a form?

It's too broad, too vague.

MR. PULVERMACHER: Well, that what you asked for.

MR. BLYER: I object.

BY MR. PULVERMACHER:

Q Did you receive an unemployment form filed by Edward Nelson Arroyo?

MR. BLYER: I object on the grounds of

relevance.

JUDGE PLAINE: Well, are you -- this is basically preliminary, because if there is such a form --

MR. BLYER: All right.

I withdraw my objection, your Honor. I apologize.

Go ahead.

JUDGE PLAINE: Please continue, Mr. Pulvermacher.

A The question is, did I see a form, an unemployment insurance form for Nelson Arroyo --

MR. BLYER: Did you receive a claim?

A -- after his first firing?

Q Did you receive notice of such claim?

A Yes, I did.

Q And do you have such claim in the office?

A I remember signing one and returning it. I would have to check my records to see if we have a copy of it in the office.

MR. BLYER: Your Honor, if we don't go any further on this -- nevermind. Excuse me.

MR. PULVERMACHER: I'm going to leave this area at the moment because I'm not at the moment able to produce the form.

JUDGE PLAINE: All right.

MR. PULVERMACHER: I would suggest, however, rather than bringing this witness back, that if we have such form that it be marked as an exhibit.

MR. BLYER: There may be some questions that I will have to ask the witness on it.

JUDGE PLAINE: That's a problem with one of these things.

You know, we'll be here tomorrow. If you bring it in tomorrow morning, we'll proceed from there.

MR. PULVERMACHER: All right.

I have no further questions.

JUDGE PLAINE: Cross examination.

Counsel, let me make clear to you that if you bring the form in, see that your witness is here to testify about it, whatever he knows about it.

MR. PULVERMACHER: Yes.

JUDGE PLAINE: Now, you may cross-examine.

CROSS-EXAMINATION

BY MR. BLYER:

Q. When was this fight?

A. Excuse me?

CSA Reporting

Q When was the fight.

A I don't recall the exact date.

Q Before Christmas or after?

A I don't recall the exact date.

Q You're not sure if it happened before or after Christmas?

A I don't recall the exact date.

I recall breaking up a fight.

Q You mean it could have happened his first day of employment; is that what you're saying?

A I'm saying I don't recall the exact date.

Q All right.

A It could have been.

Q Let me just go back a second.

You're a salaried employee; isn't that correct?

A Yes, sir.

Q And when you first began working for the company from the outset, did you have Blue Cross and Blue Shield coverage?

A Yes.

Q Company paid?

A What?

Q You were paid by the company?

A The Blue Cross and the Blue Shield?

Q Yes, I'm sorry.

A Is paid by Melange Sportswear, the company.

Q Is that the same also for Mr. Norris Orie?

A Yes, Mr. Norris Orie is on that plan.

Q Now, your employees, if they're covered at all, they're covered under a different plan; isn't that right?

Was that one that was obtained through Local 318?

A I'm not familiar with the agreement with Local 318. I would assume so. I don't know.

Q Are the employees, your machine operators, Packing and Shipping Department employees -- and I'm talking about all of the employees for Stoll and for Melange -- are they --

A They are not on the same plan that I am on. We only have one plan.

Q Do you do bookkeeping work for Stoll?

A For Stoll?

Q Yes.

A Yes, I do.

Q But you're employed by Melange?

A Right.

Q What kind of bookkeeping work do you do for Stoll?

A A limited amount.

Q All right.

But what?

A Do I answer or --

JUDGE PLAINE: Yes.

The question is, what kind of bookkeeping do you do?

THE WITNESS: Oh, I'm sorry.

A (Continuing)

We have people in the office, and I supervise to see that things are done. I, myself, do know bookkeeping. I supervise and see that bookkeeping is done. I supervise the Melange because I am employed by them. We, also, do some Stoll bookkeeping.

Q You mean you supervise the employees employed by Stoll who do bookkeeping work?

A I supervise the employees doing the bookkeeping work, right.

Q Some of which are employed -- some of whom are employed by Stoll to do Stoll's bookkeeping?

A Yes.

JUDGE PLAINE: Do any of the employees do work for both, any of these bookkeeping employees do bookkeeping for both Stoll and Melange?

THE WITNESS: Well, your Honor, it's difficult to say who does what in the office. I mean, I have an office. We have employees. Work has to be

done. Yes, maybe a Melange person might do something for Stoll and a Stoll person might do something for Melange. But the end result is that all of the work that we have to do gets done.

JUDGE PLAINE: Proceed.

BY MR. BLYER:

Q You don't get paid for overtime, do you?

A I'm a salaried employee. No, I don't get paid for overtime.

Q Is that also true for Mr. Orie?

A Mr. Orie works a five-day week on his salary, yes.

Q He doesn't get paid for overtime, if he works overtime?

A If he stays an hour or so at night, no. He's on a salary.

Q But the regular employees get overtime when they work beyond their regular work week?

A Yes.

Q Now, your testimony was that at the time -- was that Mr. Arroyo was fired on Thursday, the 30th of January?

A Well --

MR. PULVERMACHER: I don't think he testified to the date of the first firing.

MR. BLYER: I'm talking about the second firing.

BY MR. BLYER:

Q Thursday, the 30th of January?

A Well, he called me on Wednesday, according to what I have here, the 29th of January.

Q Yes?

A And at that time, he told me he wasn't coming in, which was two o'clock in the afternoon, he was stuck on the highway.

I told him -- I reminded him of his promise that these things wouldn't happen.

Q Right.

A That's been one of the prerequisites for the second hiring. And I told him he was to see me tomorrow morning before he started work.

Q You didn't fire him on the phone?

A I did not say to him on the phone, "You're fired."

Q Did you fire him the next day?

A The next day I was late coming in. Mr. Arroyo passed me on the way out in the elevator.

Q You didn't talk to him?

A There was no conversation.

Q Do you know who fired him?

A. What?

Q. Do you know who fired him, who told him he was fired?

A. I told him, for one.

Q. You just said you had no conversation with him on Thursday.

A. Your question to me was, did you fire him?

Q. Yes.

A. You didn't say did you fire him on Thursday?

Q. When did you --

A. I said there was no conversation on Thursday when we passed in the elevator.

Q. When was he fired?

A. When was he fired?

Q. That's my question.

A. I believe we spoke several days later, there was a conversation.

Q. On the phone?

A. On the phone, yes.

Q. And you fired him on the phone?

A. Not wanting to do so originally, but I was forced to, yes.

Q. Who called who?

A. I certainly didn't call him.

Q. He just stopped coming in?

A Well, let me ask you this --

Q No, don't ask me anything, my friend.

A He stopped coming in, yes.

(Laughter.)

Q He stopped coming in?

A Yes.

Q Now, was he under directions to stop coming in?

MR. PULVERMACHER: Well, I think the Court can take note of the witness' prior testimony, that the timecard has been removed, which has been confirmed by Mr. Arroyo himself.

JUDGE PLAINE: I'm still puzzled.

I haven't heard any conversation about firing.

MR. BLYER: I'm waiting for it myself, your Honor.

BY MR. BLYER:

Q You said the phone call that he made to you was several days after the Thursday?

A Right.

Q Several days after it?

A Yes.

Q Several work days after the Thursday?

A Right, about a check.

Q So on Thursday you had no conversation with him?

A No.

He passed me in the elevator, right.

Q On Friday and maybe Monday or Tuesday he didn't come in?

A Right.

Q But eventually he called you?

A About a check. We discussed -- he called me about the check, right.

Q And you told him what?

A I told him that because of what is happening again after being warned, that I couldn't have him there any longer.

Q So you fired him on the phone?

A Yes.

Q And what was the reason you gave him?

A The reason I gave him?

Q Yes.

A The continuing absence without the telephone call.

Q Is that a continuing absences or absence, singular?

A Absence, singular.

Q So there was one absence, is that correct, in the --

A There was one absence.

Q -- I mean, that caused his discharge?

A That caused his discharge, one absence, yes, after the second hiring or rehiring.

Q And that was because he called in late at around two o'clock?

A That was because when I hired him, I told him that I would not tolerate any of the things that were happening prior.

The absences or the fighting and since I felt that it was continuing, I put a stop to it and I fired him.

Q My friend, you didn't even know when the fighting had taken place; isn't that correct?

A There was a fight.

Q Well, how do you know it occurred before --

A There was a fight.

Q -- he was fired you claim for the first time?

A There was a fight. I'm not sure of the time.

Q Do you want to answer my question?

A I'm not sure of the time.

Q I know.

So how do you know you told him you wouldn't stand for his continued fighting, you calim you said that to him when you rehired him, but you have no idea when the fight occurred?

A. Well, it was before the second hiring.

Q. I asked you four times before --

A. You asked me.

Q. Wait a second.

-- when the fight occurred. And you said to me, I don't know, I don't know.

I even said, well, did it happen the first day?

You said I don't know. Now you remember. It was before he was fired allegedly for the first time?

A. Correct.

Q. Now, was there another fight when he came back?

A. One fight.

Q. Before?

A. Yes.

Q. But there was one absence?

A. Right.

Q. It really wasn't absence, it was late, right, that he called in late at two o'clock?

MR. PULVERMACHER: Let the record show that General Counsel is purposely misstating it.

The preceding week there is also an absence on the second day of the work week.

JUDGE PLAINE: No, no.

We're in this one week.

Now, please don't change the subject,

counsel.

MR. PULVERMACHER: No.

There was a misstatement of the facts, your Honor. It was purposeful by the General Counsel. He has a copy of this material. He has the record in front of him.

JUDGE PLAINE: Now, please, Mr. Pulvermacher. We're talking about the week ending February one, aren't we?

MR. BLYER: More than that, your Honor. I think the record will show that the witness' testimony is that he only recalls one, what he calls an absence, which led to his discharge, this one solitary absence on the 29th --

JUDGE PLAINE: Of January?

MR. BLYER: Yes.

-- when he called in at two o'clock and told him that his car broke down.

BY MR. BLYER:

Q Is that correct?

MR. PULVERMACHER: Will you repeat the question?

I got lost in the language.

JUDGE PLAINE: All right.

BY MR. BLYER:

Q You're saying to me that his discharge was caused by one solitary absence on the 29th where he called in at around two o'clock and told you that he had problems with his car and couldn't get to work; isn't that your testimony?

A No, as you stated it, no.

I'm saying --

JUDGE PLAINE: What was the absence that you were referring to?

A I'm saying to you that this absence on this day here --

Q Wednesday, the 29th?

A That's on this card, January 29th.

Q Yes.

A -- when he did not call me in the morning, when he called me two o'clock or 2:30 in the afternoon on the highway from some airport and told me that he wasn't coming in, I say that this is the day that caused his dismissal.

Q All right.

JUDGE PLAINE: You've said substantially that before.

Q He told you his car broke down; right?

A Something with the car, yes, on the highway, broke down, yes.

Q His performance then had nothing to do with his discharge? This way, please. I'm talking to you.

A And I'm looking at you.

Q His performance had nothing to do with his discharge; right.

A Attendance at a job, I think, is also conducive to --

Q He didn't make --

MR. PULVERMACHER: Let's let the witness finish his answer.

JUDGE PLAINE: Just a minute, please.

The question to you was:

Was it his absence or the way he performed his job?

THE WITNESS: His absence, your Honor.

BY MR. BLYER:

Q Didn't you think that was awfully strong medicine to fire a man who gave you an excuse that his car broke down and up until then he was doing reasonably satisfactory work?

I mean, you felt sorry for him when you first gave him the job, what changed things?

A I did feel sorry for him the first time. It was the holidays at the time.

Q Well, the holidays --

A. He came back to me and said he wanted a job. I did feel sorry, yes.

Q. What changed things?

A. However, I have a certain responsibility at Melange Sportswear. I can't discharge my responsibilities if people don't discharge theirs. That job that was being created, was an important job. Returns of merchandise can't lay, they must be opened, they must be checked, they must be recorded. This is an important job. I did tell Mr. Arroyo, before I rehired him the second time, that he'd have to come in everyday. And here are the records. It's the same old story all over again, the not coming in and the not calling.

Q. How come you didn't fire him when he missed one day the week before on Tuesday?

A. Compassion.

Q. Did you really know about the fact that he didn't come in on that day at the time you told him that he could no longer work for you?

A. Did I know about -- you mean the previous --

Q. The prior week that he missed the day.

A. The week of 1-25?

Q. Yes.

Did you know that?

A. Did I know about it?

Q Yes.

A Yes, I did.

Q But yet it was only the one solitary time that he missed on Wednesday, the 29th, that led you to fire him?

A Well, when does it stop?

Q I didn't ask you when does it stop.

You said to me it was only because of that one.

A Yes, it was the second day of absence, yes, that particular day.

Q That was the only one you knew of, I think; isn't that correct?

That was the only one you were talking about when you talked to him, look, you missed this day, that's it for you.

You didn't tell him that he missed another day, did you?

A You mean on the telephone call that day?

Q Yes, when you told him he was fired.

A No.

I said you're out today and you didn't call me.

Q You don't mean that, you said he's out today, you said you spoke to him about a week after?

A I spoke to him that day when he called me. I had asked him, I said, "Why didn't you call me this morning?"

He went into the story about the airport and his car breaking down.

Q Well, you fired him that day now?

A No, not that day.

Q A week later?

A Days later when he called.

Q And then at that time you told him --

A I told him it's continuing, the absenteeism is continuing.

Q And you were referring to the one Wednesday?

A I referred to that day, this day here, yes.

Q The one Wednesday?

A The 29th of January.

Q Now, on that Thursday when he came into work, as far as you know no one told him he was fired; right?

A I didn't speak to him.

Q You had his timecard?

A On my desk.

Q And then you say that a couple of workdays thereafter you just didn't hear from him, he didn't show up and he didn't call?

A He spoke to me on the phone a few days later.

Q A few days later?

A Yes.

Q Did you happen to ask him, where have you been since Thursday or Friday?

A I wasn't concerned.

Q Just stopped coming?

A I didn't see him.

JUDGE PLAINE: Did you ever tell Arroyo why he was fired, either face to face or on the phone?

THE WITNESS: There was a telephone conversation, yes, your Honor.

JUDGE PLAINE: What did you tell him in the telephone conversation?

THE WITNESS: He's fired. I told him about the absenteeism and I told him he couldn't continue under those circumstances.

JUDGE PLAINE: And this was when?

THE WITNESS: Several days after.

JUDGE PLAINE: Several days after you saw him on Thursday the 30th; is that right?

THE WITNESS: Right.

BY MR. BLYER:

Q When you hired -- withdrawn, please.

When Mr. Arroyo began doing work in this Credit Department, did you -- withdraw that, too, please. I'm sorry.

When was it that Norris told you that Arroyo was

asking him for a raise?

A. I don't remember the day.

Q. Was he still a packer at the time?

A. I --

Q. According to your interpretation of the facts, was he still packing?

A. I don't know. I can't recall.

Q. Norris give him a raise on his own?

A. Did Norriw give him a raise on his own?

Q. Yes.

A. No.

Q. But he could fire him on his own?

A. Yes.

Q. I see.

A. However --

JUDGE PLAINE: However, what?

A. However, before raises are given, they are generally discussed with me.

Q. Was Norris responsible for his raise to three dollars?

A. As I said before, when we hire people, we usually give them a lower salary until we try them out to see if they're successful and do their job properly.

After they're there awhile, we then bring them up to the regular wage that everyone else is getting.

Q Did Norris recommend him for a raise?

A Norris discussed it with me.

Q He talked favorably or not favorably about it?

A We talked.

Q Thank you.

But what did you say?

A He mentioned to me about Arroyo asking -- about Mr. Arroyo asking for the raise. I remember the conversation about the raise, I don't remember the particulars of the conversation.

Q I'm not asking you for the particulars.

Was he recommending him for a raise or not?

A He spoke to me and said to me that Nelson had been there awhile and that he understood about when he first started, he would be getting less per hour and that he was there awhile and that he had asked -- and that he would be asking the increase in the -- to the higher per hourly rate.

I had this conversation with Norris, and we increased it to the greater rate.

Q Did he make a recommendation to give him a raise?

A In the sense that you're saying it, there's no recommendation for raise involved here. I mean, you're hired at one rate and if you are there, you get the next rate.

A raise, to me, is if you -- like, if I went to Mr. Rossi and asked for a raise, I would ask for it on my good merits. There were no good merits involved here. We told him, you start at this salary and you do your work and you'd go to the next hourly rate. And Norris brought to my attention that he was here and Mr. Arroyo had said he's here for that long a period of time and he would like to go to the next rate.

I agreed.

Q Norris was not satisfied with his work; isn't that correct?

A That's correct.

Q But yet he didn't disapprove of you or discourage you from giving him three dollars an hour on the grounds that he didn't deserve it?

A Well, I don't really recall when the change was made, whether he was still doing the picking and packing or whether he was doing the credit work.

Q I thought you testified, Mr. Minichino, that it was your decision to give him three dollars an hour because you were creating a new job.

Doesn't that ring a bell when you gave him the raise?

A Yes, but was he making the three dollars then or

before? I don't recall. I know we had given him the money. If it was for the old -- I recall speaking to Norris about it. I don't recall when it was actually put into effect.

I do recall, however, when he came in for the new job, if it was three dollars, it was three dollars. It was well within the budget for the new department, for the new job.

Q Did you ever offer to get Mr. Arroyo a job at another place?

A Yes, as a matter of fact, I did.

Q When was that?

A After he had been fired the first time. He was on the premises for some reason or other, I think during lunch hour to chitchat with one of his friends. I asked him, I said, "Are you working?"

He said, "No."

I knew they were hiring -- I don't know the company, but there was a company just down from us in Bush Terminal. I knew they were hiring people. I suggested that he go there.

Q This wasn't after he was discharged by you or so you say?

A This was the first discharge.

Q But you had nothing to do with that discharge,

did you?

A I didn't break the bad news, no.

Q Did there come a time that Mr. Arroyo came down to the plant to pick up his check after he was fired the second time, after you claim he was fired for the second time?

A He must have. I don't have the checks.

Q Wouldn't someone come to you? Don't you dispense the checks?

A I also have a full charge bookkeeper. She could dispense the checks in my absence.

Q You don't recall giving Mr. Arroyo his check?

A I recall -- I recall seeing him there. I might have given it to him. I don't recall at this time.

Q And at that time, was that not the time that you suggested that you would help him get another job elsewhere?

A I believe it was the first time we had this conversation.

Q But you're not sure?

A I'm pretty sure it was the first time he was fired.

MR. BLYER: I have nothing further, your Honor.

JUDGE PLAINE: Nothing further?

CSA Reporting

MR. BLYER: No.

JUDGE PLAINE: Any redirect?

MR. PULVERMACHER: Yes.

REDIRECT-EXAMINATION

BY MR. PULVERMACHER:

Q I heard you answer twice with respect to this phone call to you on Wednesday, January 29th, the word "airport."

Did he say that he had been to the airport and he was on his way back, or something like that?

A He said something about going to the airport -- something about going to an airport or having to be at an airport and his car breaking down on the highway. That's the gist of it. I don't recall it verbatim.

Q And that was somewhat around two o'clock in the afternoon?

A I had returned from lunch. It would have to be two o'clock, 2:30, around there, 2:15.

Q You have no ill will or ill feeling against Eddie Arroyo personally, do you?

A No, none at all.

Q And Peter Rossi and Stanley Yagoda did not enter into your decision to discharge him the second time?

A No.

Q Is there any doubt in your mind that he was discharged once in December and once in January?

A There's no doubt in my mind.

Q And as far as you're concerned, the discharge in January occurred during the phone conversation he was having with you on January 29th but thought not expressed to him at that time?

JUDGE PLAINE: Well, I didn't get the testimony that way at all.

MR. PULVERMACHER: Well, I think the witness said that --

JUDGE PLAINE: The witness testified that he told him he was discharged sometime after Thursday the 30th in a phone call when Arroyo called about his paycheck. That was the testimony.

MR. PULVERMACHER: Yes.

But I think, your Honor, that the witness was indicating that in his mind, he had for-closed the subject.

JUDGE PLAINE: Oh, I'm not talking about what's in his mind, I'm talking about what he testified to, counsel.

MR. PULVERMACHER: All right.

JUDGE PLAINE: Am I wrong, Mr. Minichino?

MR. PULVERMACHER: I think you are,

your Honor.

THE WITNESS: Well, the --

JUDGE PLAINE: Did you tell Arroyo he was fired on Wednesday, the 29th when he called you?

THE WITNESS: I told Mr. Arroyo on Wednesday, the 29th --

JUDGE PLAINE: To come and see you?

THE WITNESS: -- that I couldn't have these continual days without calling me and that he was not to start work the next day until he spoke to me. That's what I said to him at that time.

JUDGE PLAINE: All right.

THE WITNESS: Now, in my mind, your Honor --

MR. BLYER: That's irrelevant, your Honor.

JUDGE PLAINE: I don't care what was in your mind, it's what you told the man that's important to us.

THE WITNESS: That is what I told the man, your Honor.

JUDGE PLAINE: You saw him on the 30th of January and you said nothing to him, is that your testimony?

THE WITNESS: Yes, your Honor.

JUDGE PLAINE: All right.

THE WITNESS: Am I excused, your Honor?

JUDGE PLAINE: I don't know yet. Counsel may have some more questions for you.

Mr. Pulvermacher, do you have anymore direct of this witness?

MR. PULVERMACHER: I don't think so, your Honor.

May I have just a moment?

JUDGE PLAINE: Yes.

MR. PULVERMACHER: No, your Honor, I'm finished with this witness.

JUDGE PLAINE: Mr. Blyer, do you have any further questions of this witness?

MR. BLYER: One second, your Honor.

MR. PULVERMACHER: There is one question, your Honor.

JUDGE PLAINE: All right.

BY MR. PULVERMACHER:

Q If you would look at the timecard.

Is there any doubt in your mind that he was not fired on January 22nd?

January 22nd would be the week ending January 26th.

JUDGE PLAINE: 25th.

MR. PULVERMACHER: Well, how do you keep it?

A The 25th is the week prior.

The week we're talking about is the week ending 2-1.

Q Well, look at the card for the week ending January 25th.

Is there any doubt in your mind that he worked and was paid for whatever period of time he worked for that period ending January 25th, 1975?

A He was not in one day that week and he was paid for the 24 1/2 hours.

Q What's a full work week?

A 35 hours, seven hours per day, five days a week.

Q So, in addition to being absent one day, he was also short time on some other days?

A Yes.

Q But there's no doubt that he was not fired on the 22nd of January, 1975, is there?

A There's no doubt that he was not fired, yes.

Q On that day?

A On that day.

MR. PULVERMACHER: No further questions.

RECROSS-EXAMINATION

BY MR. BLYER:

Q When Mr. Arroyo called you on the 29th at around two o'clock, so you say, did you disbelieve that his car broke down?

A Did I disbelieve?

Q I withdraw that.

Did you question him about that, about his car having broken down?

A No.

I believed him.

MR. BLYER: Okay.

I have nothing further, your Honor.

MR. PULVERMACHER: Your Honor --

JUDGE PLAINE: You're excused.

MR. BLYER: May I ask him one other question.

JUDGE PLAINE: Yes.

BY MR. BLYER:

Q Do you know Mr. Quinones, right here next to me (Indicating)?

A No, sir, I don't.

MR. BLYER: Okay.

Nothing further, your Honor.

JUDGE PLAINE: All right.

You're excused.

THE WITNESS: Thank you.

(Witness excused.)

MR. PULVERMACHER: Your Honor, since we're going to return tomorrow and since it's about one minute past the time set for the adjournment, perhaps we can adjourn at the moment.

JUDGE PLAINE: Yes.

Off the record.

(Discussion off the record.)

JUDGE PLAINE: Back on the record.

We will recess at this time 'til ten o'clock tomorrow morning, gentlemen.

(Time noted: 6:03 P. M.)

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PROCEEDINGS

JUDGE PLAINE: On the record, please.

MR. PULVERMACHER: Counsel for the N.L.R.B. requested a stipulation with respect to payroll for the period from the week ending November 16 through February 8, and I believe the following would cover that.

MR. BLYER: May we go off the record?

JUDGE PLAINE: Off the record.

(Discussion off the record.)

JUDGE PLAINE: On the record.

My understanding is that the parties are about to suggest a stipulation regarding certain payroll records.

MR. PULVERMACHER: Counsel for the N.L.R.B. has requested a stipulation with respect to payroll records for Stoll alone, which is acceptable, and I will read into the record the stipulation which will cover the gross pay for all employees for the period ending as indicated.

It will also indicate the number of employees on the payroll for such week.

I will first read the week ending date, the number of employees on the payroll, and then the gross amount for each separate week. The first will

relate to Stoll and, when indicated, will relate to Melange.

November 16, 1974, $5,073.45, 46 employees.

November 23, $6,043.04, 47 employees.

November 30, 1974, $6,141.42, 48 employees.

December 7, 1974, $4,956.48, 46 employees.

December 14, $5,221.96, 49 employees.

December 21, 1974, $5,544.39, 49 employees.

December 28, 1974, $5,166.87, 49 employees.

January 4, 1975, $5,229.16, 50 employees.

January 11, 1975, $5,855.38, 49 employees.

January 18, 1975, $5,915.31, 50 employees.

January 29, 1975, $6,337.76, 51 employees.

February 1, 1975, $7,102.90, 57 employees.

February 8, 1975, $7,182.07, 58 employees.

That is the end of the stipulation with respect to Stoll Industries.

MR. BLYER: May we go off the record, Your Honor?

JUDGE PLAINE: Yes. Off the record.

(Discussion off the record.)

JUDGE PLAINE: On the record.

MR. PULVERMACHER: With respect to Melange for the exact period:

November 16, 1974, $5,498.35, 22 employees.

November 23, 1974, $5,827.56, 23 employees.

November 30, 1974, $5,712.63, 23 employees.

December 7, 1974, $4,768.76, 21 employees.

December 14, 1974, $4,882.74, 21 employees.

December 21, 1974, $4,976.56, 22 employees.

December 28, 1974, $4,792.46, 20 employees.

January 4, 1975, $4,626.33, 18 employees.

January 11, 1975, $5,183.24, 22 employees.

January 18, 1975, $5,713.14, 23 employees.

January 25, 1975, $5,490.41, 23 employees.

February 1, 1975, $5,544.41, 23 employees.

February 8, 1975, $5,521.35, 23 employees.

In determining the number of employees employed in any week, the record would not disclose the number of days or hours and therefore, for the purposes of this stipulation, the records reflect as an employee a person who received any pay for the period reflected above and no pay would be paid to a person who did not appear at work during such pay period.

JUDGE PLAINE: Thank you.

Is the stipulation agreeable?

MR. BLYER: Yes, sir.

JUDGE PLAINE: Is there a further stipulation?

MR. PULVERMACHER: Yes, there is a further stipulation to eliminate substantially testimony of Mr.

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Stanley Yagoda, who will testify on certain points.

It is stipulated between counsel that Stoll Industries is a sewing plant for sweater and knitted miscellaneous garments, that Mr. Yagoda is a sole stockholder of Stoll, that Mr. Yagoda owns most stock of Melange, that Mr. Yagoda is an officer and director of Stoll and the sole officer and director of Stoll, that he is not an officer or director of Melange, that he did not at any time say that Stoll paid $100 to the union book of Local 318--

JUDGE PLAINE: I didn't hear the last.

MR. PULVERMACHER: That if he were called to testify, he would say that at no time had he stated that Stoll Industries or he would pay the initiation fees or $100 for the union book of Local 318;

That Stoll leases the entire sixth floor and subleases a portion of it to Melange for packing, receiving and shipping.

MR. BLYER: I will stipulate to that, Your Honor.

JUDGE PLAINE: All right.

That concludes the stipulations right now?

MR. PULVERMACHER: Yes, sir.

DIRECT EXAMINATION

BY MR. BLYER:

Q Mr. Vargas, when Mr. Arroyo stopped working for the company in late January, 1975, were you still working there?

A Yes.

Q When Mr. Arroyo stopped working for the company in late January, 1975, what job were you doing?

A Packing.

Q When Mr. Arroy stopped working for the company at the end of January, 1975, what job was Mr. Arroyo doing?

A In the afternoon he was packing.

Q Who else was working in the Packing Department with you and Mr. Arroyo?

A Two other fellows whose names I don't know. They are from India.

Q Mr. Vargas, do you recall that in December, 1974, at the plant, there was a Christmas party?

A I don't know if it was in December. I know there was a party.

Q The records show that that party was held on Tuesday, December 24th.

A Yes.

Q And that the Christmas Holiday was Wednesday,

December 25, the next day.

A Yes.

Q On Friday, two days after Christmas, do you recall going to the plant for your check?

A Yes.

Q What happened when you went to the plant for your check?

A When I came to get my check on Friday, I was told that on Monday I should call in to see if there was work for me because many of the plants were closed and they were not receiving work. So to make sure there was work, I should call.

Q Who told you that?

A Norris.

Q What happened on Monday?

A I called Monday morning on the phone and he told me there was no work yet, I should call Tuesday.

Q What happened Tuesday?

A I also called in and I was told the same.

Q Did there come a time that you were told to come back to work?

A Yes.

MR. BLYER: Thank you very much.

CROSS-EXAMINATION

BY MR. PULVERMACHER:

Q When you made these calls, was Mr. Arroyo with you?

A No, because I was calling from my home.

Q Do you know whether or not Mr. Arroyo has a telephone in his home?

A He has not got telephone in my home.

Q Do you know if Mr. Arroyo has any telephone?

A I don't know. I don't live there.

MR. PULVERMACHER: I have no further questions.

JUDGE PLAINE: You are excused.

(Witness excused.)

MR. BLYER: Mr. Arroyo.

JUDGE PLAINE: Mr. Arroyo has been sworn and there is no need to reswear him. The same applies to the Interpreter.

Whereupon,

ARROYO

recalled as a witness, having been previously duly sworn was examined and continued to testify as follows through the Spanish Interpreter, Albert B. Boyne:

DIRECT EXAMINATION

BY MR. BLYER:

Q Mr. Arroyo, did there come a time when you

worked for Melange that you had the job of opening boxes of goods that had been returned by customers?

A Yes, sir.

Q How did you come to do that work?

A After the Christmas Holidays, the same day that we obtained our checks, Norris told me that work was slow because there were factories that were closed and there was no production, so he said I should call Monday. So I called Monday. There was no work.

He told me to call the following day, and so on, and I kept calling. And one day I went to the office and I asked Carmine what was happening that there was no work, so Carmine told me that he did have special work for me. He explained to me what the work was about.

There was a mountain of boxes which had come back during that period of time. The work was that I [illegible] to open those boxes and separate the damaged merchandise on one side and the merchandise that was good, put it back in stock.

Q Mr. Arroyo, how long did it take, approximately, for you to do this job, as you explained, with regard to this mountain of boxes.

A I don't remember exactly, but I believe it was about four days.

Q After that, did you still continue to work

on these returns?

A After I finished that big amount of returns, every morning I took care of a few boxes that came in and in the afternoon I did packing again.

Q On the last day you worked for the company, what work were you doing?

A In the morning I did, as usual, take care of a few returned boxes, and in the afternoon I did packing.

Q Who was working with you doing packing at that time?

A Vargas.

Q Anyone else?

A The two Indians, too.

Q Mr. Arroyo, yesterday Mr. Minichino referred to a phone call that you made from the airport. Do you ever recall making such a call?

A Yes.

Q Can you tell us, if I show you your time cards--and these are copies of the cards--

MR. BLYER: Let the record reflect I am handing the witness Respondent's Exhibit No. 4.

Q (cont'd) If I show you all these cards, can you tell me when that phone call took place? Each page has a time card. The first one is in October and the last one is February. So look through that and

tell me, if you can tell me, when you made that call?

A I cannot tell you through the cards, but I can tell you that it was on Tuesday.

Q What Tuesday?

A Tuesday, the day before I was fired, which is the day I didn't come to work. The day before the day that I didn't find the card on the rack.

MR. BLYER: I have nothing else, Your Honor.

CROSS-EXAMINATION

BY MR. PULVERMACHER:

Q Mr. Arroyo, where do you live?

A 639 Union Street, Brooklyn.

Q Did you live there in January, 1975?

A Yes.

Q How do you get from your home to the factory?

A By car.

Q With reference to this telephone conversation that you spoke to Carmine, you say it was a Tuesday?

A Yes.

Q What time of day was it?

A Between 11:00 and 11:30, more or less.

Q You were present yesterday and you heard Carmine testify it was sometime about two o'clock.

A He can say whatever suits him.

Q But you did hear that?

A Yes, I did.

Q Did you receive a check for about $37 for the week ending February 1, 1975, about $39, $40?

A I don't know much about dates. Are you talking about that day when I went there to get my check?

Q Yes.

MR. PULVERMACHER: For the record, let me indicate the check was for $39.33.

A I believe so.

MR. BLYER: I will stipulate, Your Honor, that the records show for the week ending February 1, 1975, that a check was made out for $39; that the records show $39.33 as the net pay of Mr. Arroyo.

I will not stipulate to anything else, though.

MR. PULVERMACHER: I am not asking for anything else.

Q You say this telephone call was made at 11:00 or 11:30 in the morning?

A Yes.

Q Where did you make it from?

A I was stuck with my car on the way and wherever I found a telephone there. I had to walk a few blocks before I found a telephone.

Q Had you been to the airport?

A Yes.

Q Whom had you seen off?

A To fetch a cousin of mine.

Q What time did the plane arrive?

A I believe at about eight o'clock. I arrived at the airport at eight o'clock.

Q When did you leave the airport?

A As soon as I picked her up.

Q Half an hour, an hour after you arrived?

A I cannot tell you. I was not looking at the clock.

Q Did you take her anyplace?

A Yes.

Q Where did you take her?

A My home.

Q Your home?

A Yes.

Q Did your car break down going to your home or after you had been home and were going to the factory?

A As I was coming back from the airport.

Q Which airport were you going to?

A Kennedy.

MR. PULVERMACHER: Will the Court take judicial notice that Kennedy Airport is about eighteen miles from the center of New York and approximately the same distance from the plant.

JUDGE PLAINE: Let us go off the record for a moment.

(Discussion off the record.)

JUDGE PLAINE: On the record.

MR. PULVERMACHER: It is stipulated between counsel that Kennedy Airport is between fifteen to eighteen miles from Bush Terminal.

BY MR. PULVERMACHER:

Q How far is Kennedy from your home, Mr. Arroyo?

A I don't know. I cannot tell you.

Q How long did it take you to drive out to Kennedy?

MR. BLYER: Your Honor, I would object to the relevancy of it. Are we going to go into the driving conditions on that day? I think, if counsel would like, we can stipulate to that Kennedy Airport must be around fifteen miles from his home. His home is in this neighborhood. I know it is about fifteen to twenty miles to Kennedy.

MR. PULVERMACHER: I will agree with the stipulation.

JUDGE PLAINE: It is about fifteen to eighteen miles.

MR. BLYER: And you can make it in ten minutes and you can make it in four hours depending upon

traffic conditions.

Q How long before you called Carmine did your car break down?

MR. BLYER: Objection as to relevancy, Your Honor.

MR. PULVERMACHER: There was testimony given that the witness was not in when he was supposed to be in on a given day.

JUDGE PLAINE: I will allow it. If he knows the answer.

A About one hour.

Q So, as I understand your testimony, your car broke down at about 10:30 and you called Carmine about 11:30?

A I am not sure about that.

Q But that is your best belief?

A I am not sure.

Q Do you know what you were doing when you were opening these boxes when you came back to work in January of 1975?

A Of course I did.

Q You were preparing some papers to show what the boxes contained, after you opened the box and saw what was in the box, to show what was in the box?

A I only open the box, separated the damaged

goods from the good goods, put it aside, and Milton's sister was the one who was taking notes about what was there.

Q So you mean Milton's sister could make the document, which is called the credit memo?

A Yes.

Q Did you know that that credit memo was reflected as a credit on the monies due from the purchaser?

A Yes, I believe so.

Q When you returned to work in January, you say there was a mountain of goods; is that correct?

A Yes.

Q And that it took you approximately twelve days to go through the mountain of goods.

A Who said so?

Q I am sorry. I thought on your direct testimony you said it took you--

A Four days.

Q When you were going to Kennedy on this day did you tell Carmine you were going to be late the following morning?

A Yes, I told him so, that I was going to be back at noon, but at noon I couldn't be there because I was stuck with my car. Therefore, I called him again.

Q Is it your testimony that Carmine gave you

permission to take the morning off then?

A Yes.

Q Did you have a telephone conversation with Carmine on or about January 29?

A I don't know if that was the day I had a conversation or not.

Q Let us say, after the last day you worked at the plant, did you have a conversation with Carmine?

MR. BLYER: Your Honor, I would object to the form of the question in view of the prior question. I think it is quite misleading now. The witness, I am sure, does not know if he means a conversation in person or by phone or any conversation.

JUDGE PLAINE: Restate the question.

Q After your last day of work at Melange, in January, 1975, did you have a conversation, telephone conversation, with Carmine?

A No, I don't believe so. I don't know.

Q Isn't it a fact that you don't have a telephone in your home?

A Downstairs in my building there is a telephone and next to us in the restaurant there is a telephone.

Q And if the conversation had been between you, you would have called?

A Yes, possibly.

Q He couldn't call you?

A No.

Q Is it still your testimony that the last day of work was January 22?

A Yes.

Q And that you were fired on January 22?

A That is the day I didn't find a card.

JUDGE PLAINE: Are there any receipts or paychecks that would show--

MR. PULVERMACHER: The difficulty with paychecks--we have the payroll time cards, we have the IBM ones, but the payroll cards and checks are made by the bank that maintains the payroll, returned to the bank, and they don't come back to the customer.

It would take something like three weeks to get them out. We have attempted to get them and we have been advised by the First National City Bank that there is no ready availability of these type of payroll checks.

JUDGE PLAINE: You have five paychecks for Guzman. I wonder if we couldn't settle this issue of--

MR. PULVERMACHER: The difference is that the Stoll paychecks were the handwritten paychecks before they went on to the full machine computation and they are the checks in the first of October. These

checks were returned by First National City, but the checks which we are referring to, those checks are not readily available.

The records of Melange consist of the time cards, which indicate that he was paid for two days in the week ending February 1, and that he was in Monday and Tuesday, which would be for the--

JUDGE PLAINE: I understand all that. I have seen it several times. What I don't have is a receipt of the employee that would acknowledge that he worked that time and was paid for that time.

That normally would be your receipted check, so that we have left the records up in the air with this conflict.

MR. PULVERMACHER: May I suggest this, Your Honor? We have asked for these records from First National City Bank. Perhaps, with the stipulation of counsel, we will insert them as an exhibit when we receive them, front and back of all checks paid to Arroyo during January. I think that would be the best way. I don't think we need them.

JUDGE PLAINE: We have to be assured that the witness acknowledges it as his signature, but, of course, if either or both of you think it is useful or important, we could arrange for that and General Counsel

could either indicate, after consultation with the witness, that it is or isn't his signature; and he might have to come back if there is a fuss about it.

MR. PULVERMACHER: I think that is an appropriate procedure to resolve it.

Therefore, I would ask for permission to introduce an exhibit, when received, the payroll record of this witness, the paychecks for this witness for January, 1975.

JUDGE PLAINE: Do you have any comment on this, Mr. Blyer?

MR. BLYER: No, Your Honor. I think it is a fair request that you have made and I am certainly willing to cooperate on that. But I would ask that we have the paychecks for the week ending January 18th, the week ending January 25, and the week ending February 1, because it would be three checks.

MR. PULVERMACHER: I think we are talking about the same thing. I said all payrolls in January, but I meant that. Certainly I agree with you.

JUDGE PLAINE: It is my understanding that there will be an attempt to file this for the record, even though we close today. If there is any question, both counsel will be in touch with me, but if there is not, we can give the exhibit a number now. Let us say

that R-8 will be the paychecks in January, 1975.

MR. BLYER: It should be three paychecks.

JUDGE PLAINE: In January and February, 1975, if there were any, for employee Arroyo.

MR. BLYER: There should be, is that right?

MR. PULVERMACHER: My thinking is the same as yours. Yes, there should be three.

(Document above referred to deemed marked Respondent's Exhibit 8.)

MR. BLYER: Your Honor, we will have to arrange to send you that exhibit with a duplicate.

JUDGE PLAINE: Yes, that's right. You might get it in time for transmission to the court reporter to bind up into the exhibits, but if you don't, it is something that you and counsel can work out. He is going to have to see them.

MR. PULVERMACHER: Further, just to clarify it, if there is any question about authenticity by General Counsel, we will resolve that in consultation with the Court. In other words, I don't anticipate one of authenticity, but there may well be. I don't mean to foreclose counsel from it.

BY MR. PULVERMACHER:

Q Mr. Arroyo, do you have any paychecks you received in January?

A No, I don't remember.

Q Do you remember if you worked two weeks or three weeks in January?

A I don't recall.

Q Mr. Arroyo, Mr. Minichino, in his testimony yesterday, referred to a fist fight that you had been involved in. Do you recall that?

MR. BLYER: Your Honor, I would object on the ground that this is now outside of the scope of my direct examination, any conversation about a fist fight. I didn't bring that up on rebuttal. He had ample opportunity on cross-examination to ask him about that fist fight.

JUDGE PLAINE: If you want this in--you are more or less adopting this witness as your witness, although that isn't very meaningful--you can ask him.

Q Do you recall such testimony?

A If I remember what?

Q Do you remember Mr. Minichino's testimony about a fist fight you were involved in?

A I wasn't paying attention.

Q Were you in fact involved in a fist fight on the premises of the sixth floor, Bush Terminal?

MR. BLYER: I would object, Your Honor, as to relevancy. He is not being discharged for a fist

fight. It has nothing to do with the case.

JUDGE PLAINE: That's right. As a matter of fact, I think I limited Minichino's testimony in that regard.

MR. PULVERMACHER: I don't think you did.

JUDGE PLAINE: He got it in, but I didn't want it in because the question had nothing to do with the discharge of the employee.

Q Mr. Arroyo, did you file for unemployment insurance in that December period up to about January 10?

MR. BLYER: Your Honor, I would object again as outside the scope of my direct examination.

JUDGE PLAINE: I think there was some discussion that you were going to bring in or have Minichino bring in whatever records there were.

MR. PULVERMACHER: For the record, Your Honor, Mr. Minichino told me that he did receive such a form, which requires the employer's signature, but we do not keep a copy of it, and copies are not furnished by the State of New York under their procedure. So we don't have such record at this time.

It was processed in the normal fashion.

JUDGE PLAINE: Again, what is the pertinence of this?

MR. PULVERMACHINER: One, to show that he

said on the form whether he was fired or quit.

JUDGE PLAINE: This is the thing we were talking about yesterday.

MR. PULVERMACHER: We don't have the form, Your Honor, and he was the one who originated it and gave information to the State.

MR. BLYER: Your Honor, it appears to me that counsel is on a fishing expedition here as to whether he was fired or quit. I never knew that there was any contention that he quit.

MR. PULVERMACHER: There is a contention. You have contended that in December he was laid off to call in day by day. We have contended that he was fired and that he so stated to the Department of State. That's all we are interested in, what was his understanding and as of what date?

MR. BLYER: I don't think it matters. You can file for unemployment whether you have been laid off or whether you have been fired and you may not do it mistakenly if you quit.

JUDGE PLAINE: It is a typical filing law. That filing is by big company employees who have regular layoff periods, and employees regularly go down to the unemployment office for unemployment compensation and get paid after the waiting period has expired.

There would not be any demonstration of whether he was laid off or fired or what.

BY MR. PULVERMACHER:

Q Have you worked on any jobs since you were fired in January from Melange?

MR. BLYER: I will object as to relevancy and, again, outside the scope of direct.

JUDGE PLAINE: Of what materiality is that, because it is agreed among everyone here that that was a termination finally, at least in January.

MR. PULVERMACHER: No question there was a termination and I think we actually agreed there was a firing in January by the employer. I think the only dispute is to perhaps which day within a relatively short time framework.

I am going from the point of view that he claims discharge for union activities, seeking damages and remedies. I am thinking to limit the remedies. That is the whole point.

JUDGE PLAINE: The fact that he worked thereafter would be of no consequence. It might have some bearing on a supplemental hearing.

MR. PULVERMACHER: If we can have a supplemental hearing on the point, I would be satisfied.

JUDGE PLAINE: That would be the procedure

with the Board. If there is a back pay proceeding, that is separate; if there is back pay due, found to be due, that is a separate proceeding in which I will not participate.

REDIRECT EXAMINATION

BY MR. BLYER:

Q Have you received any money or financial assistance from Local 155?

MR. PULVERMACHER: I object, Your Honor, as being outside the scope of the direct examination.

JUDGE PLAINE: It is outside the scope and I do not regard it as relevant in this context.

MR. BLYER: No further questions.

JUDGE PLAINE: Anything further?

MR. PULVERMACHER: No, Your Honor.

JUDGE PLAINE: You are excused.

(Witness excused.)

Whereupon,

ALEX QUINONAS

called as a witness, having been first duly sworn by the Administrative Law Judge, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. BLYER:

Q Would you please state your name for the

record?

A Alex Quinonas.

Q Mr. Quinonas, when was it that you first met Mr. Yagoda?

A At the beginning of January, I believe.

Q What year?

A 1975.

Q Will you tell us the circumstances under which you met him?

MR. PULVERMACHER: Your Honor, this is, I understand, rebuttal testimony. There has been nothing in the Respondent's portion of the testimony regarding a meeting with Mr. Yagoda and it is well beyond the scope of cross-examination, which raised nothing about Mr. Quinonas' meeting with Mr. Yagoda.

I think it is well beyond the scope of the examination to go into this particular area.

MR. BLYER: This is in reference, Your Honor, to Mr. Yagoda's testimony.

JUDGE PLAINE: That was given this morning?

MR. BLYER: Yes.

MR. PULVERMACHER: What testimony? There were two aspects of Mr. Yagoda's testimony. There was the relationship of Peter Rossi, the foreman of Stoll, and with respect to the recommendation of certain employees by Mr. Rossi and their engagement at Stoll.

A 201 Affidavit of Service by Mail

LUTZ APPELLATE PRINTERS, INC.

COURT OF APPEALS
FOR THE SECOND D CIRCUIT

STOLL INDUSTRIES INC AND MELANGE SPORTWEAR INC., Petitioners, - against - NATIONAL LABOR RELATIONS BROAD, Respondent.	*Index No.* *Affidavit of Service by Mail*

STATE OF NEW YORK, COUNTY OF NEW YORK *ss.:*

I, Velma N. Howe *being duly sworn, depose and say that deponent is not a party to the action, is over 18 years of age and resides at* 298 Macon Street, Brooklyn, New York 11216

That on the 27th *day of* May *19* 76 *deponent served the annexed* Appendix

~~Brief~~ *upon* General Counsel Nat'l labor Rel. ~~Brock~~ Broad *attorney(s) for* Respondent *in this action, at* 1717 Pennsylvania Avenue, N W. Washington, D.C. 20570

the address designated by said attorney(s) for that purpose by depositing a true copy of same, enclosed in a postpaid properly addressed wrapper in a Post Office Official Depository under the exclusive care and custody of the United States Post Office Department, within the State of New York.

Sworn to before me, this 27th
day of May *19* 76

Velma N. Howe

VELMA N. HOWE

Robert T. Brin

ROBERT T. BRIN
NOTARY PUBLIC, State of New York
No. 31-0418950
Qualified in New York County
Commission Expires March 30, 1977